TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 67.

THE AMERICAN EXPRESS COMPANY AND R. M. COFFIN, PLAINTIFFS IN ERROR,

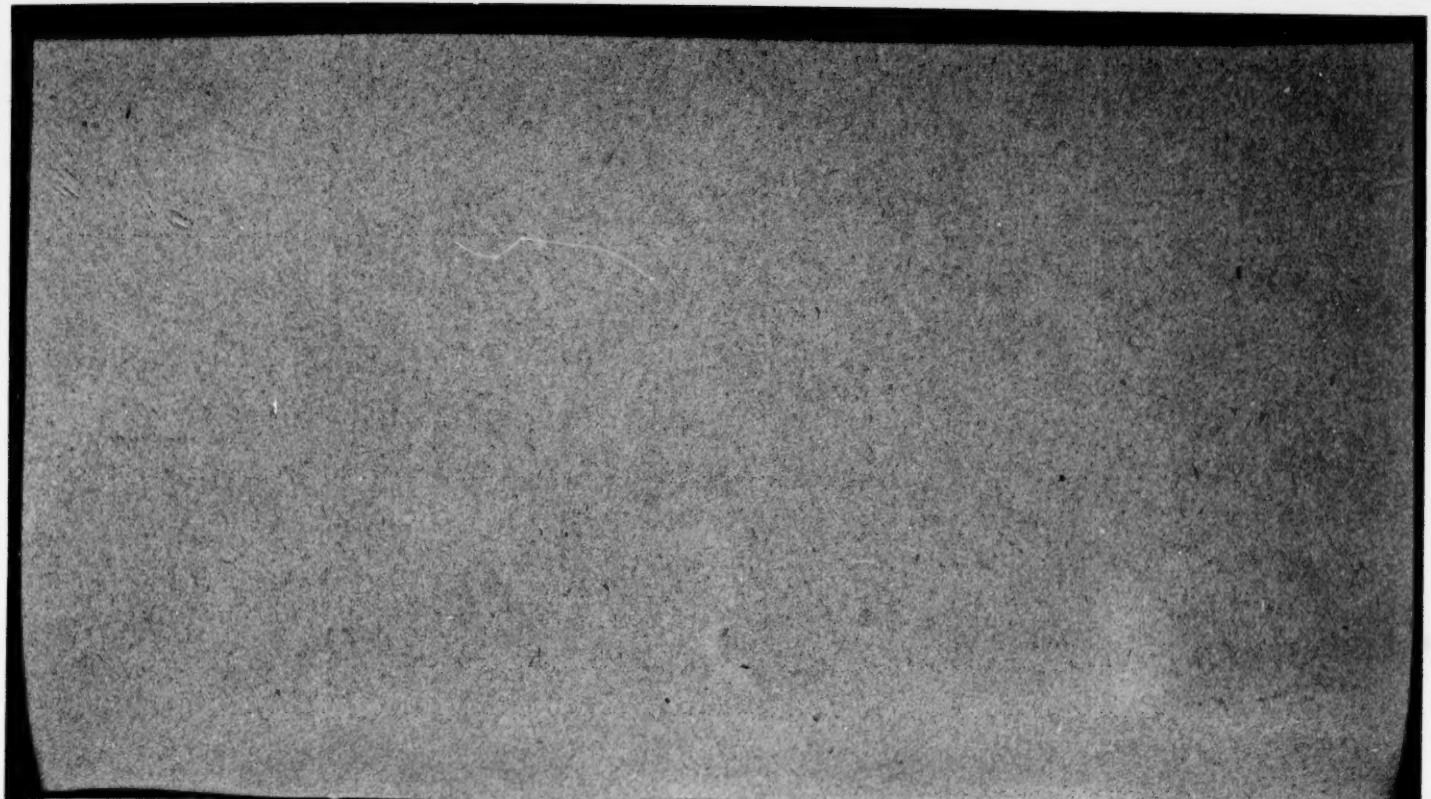
vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

FILED JUNE 20, 1904.

(18,985.)



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a Supreme Court of the State of Iowa.

THE AMERICAN EXPRESS COMPANY and R. M. COFFIN and CERTAIN Intoxicating Liquors, Plaintiffs in Error,
against
THE STATE OF IOWA, Defendant in Error.

1 In the Supreme Court of Iowa, May Term, A. D. 1901.

THE STATE OF IOWA, Appellant,
vs.
THE AMERICAN EXPRESS COMPANY and R. M. COFFIN, Appellees. } At Law.

Appeal from Tama district court, Hon. G. W. Burnham, judge.

C. B. Bradshaw for appellant.
J. W. Willett for appellee.

Appellant's Abstract.

2 On the 31st day of March, 1900, an information was filed in the office of A. W. Guernsey, a justice of the peace, in Tama township, Tama county, Iowa, charging the defendants above named with keeping intoxicating liquors in said county with intent to sell the same in violation of law, which information is in words and figures as follows:

STATE OF IOWA, *Tama County,* } *ss:*

I, B. A. Hall being duly affirmed, depose and say that I am a resident of Tama county, Iowa; that at the time the original information was filed in this cause, I had reason to believe, and did believe, and still believe that certain intoxicating liquors, to wit: whisky, brandy and wine were at the time said information was filed, kept in the office of the American Express Company at the city of Tama, in said county of Tama, which office is kept in the building occupied by the defendant R. M. Coffin as a drug store in said city of Tama, which intoxicating liquors were at the time aforesaid kept by said American Express Co. and the said defendants Coffin and Crossman, as its agents, in packages addressed to S. L. Hartsock, Geo. Everhard, Burt Anderson, W. E. Pauley and other persons to this informant unknown, which intoxicating liquors were at the time aforesaid, by the American Express Company and its Iowa agents, kept and intended by said defendants and each of them to be sold in violation of the laws of Iowa.

B. A. HALL,

Duly affirmed before A. W. Guernsey, J. P.
1—67

Thereupon the said justice of the peace issued a warrant to W. T. Hollen, a constable in aforesaid county, directing him to
3 search the premises described in said information, and to seize the packages and liquors with the vessels containing them, and to keep the same until final action thereon.

The said constable on the 2nd day of April, 1900, returned said warrant into court showing that pursuant thereto he had searched the premises, found and seized four packages of intoxicating liquors in the office of the American Express Company, in Tama, Iowa, in the building occupied by R. M. Coffin as a drug store and as the office of said American Express Company; and that he then held said liquors subject to the further order of the court.

Due notice having been given by the said justice to the defendants herein of the seizure of said intoxicating liquors, and the said defendants having been duly summoned to appear before the said justice on the 9th day of April, 1900, to show cause why the liquors and vessels seized as aforesaid should not be forfeited and condemned, the cause came on for hearing before said justice on the 9th day of April, 1900, C. B. Bradshaw appearing as attorney for the plaintiff and Willett & Huber appearing as attorneys for the defendants.

The defendants at the same time filed in said cause the following

Answer.

First count.

Now come the defendants in the above entitled cause and for answer to the substituted information filed herein, deny each and every allegation and statement thereof, except as may be hereinafter admitted or otherwise denied.

4 Defendants admit that said R. M. Coffin is the agent of said American Express Company at Tama, Tama county, Iowa.

Defendants admit that the prosecuting witness, B. A. Hall, on the 2nd day of April, A. D. 1900 was and still is a resident of Tama county, Iowa.

Second count.

Further answering said substituted information, these defendants state that The American Express Company, one of the defendants herein is a foreign corporation organized under the laws of the State of New York, for pecuniary profit with its principal office located in New York city, N. Y.

That the defendant R. M. Coffin is the local agent at Tama, Tama county, Iowa for his co-defendant American Express Company, and has been such agent for many years last past.

That the defendant W. P. Crossman is an employé of his co-defendant R. M. Coffin at said Tama, and clerks in the drug store

of said Coffin thereat, and sometimes in the absence of said Coffin handles the express of the defendant American Express Company thereat.

That the defendant American Express Company, the corporation aforesaid, is a common carrier, and as such common corrier is engaged in the rapid transportation of merchandise, personal property and other articles and commodities, in the State of Iowa, and interstate between the several States.

That on or about the 29th day of March, 1900, the defendant American Express Company, as a common carrier received from John Cullom & Co., consignors at the city of Rock Island in the State of Illinois, four boxes said to contain merchandise,
5 marked by consignors direct to the several consignees as follows to wit: One box to "W. E. Pauley, Tama, Iowa," one box to "Geo. Everhart, Tama, Iowa," one box to "Link Hartsock, Tama, Iowa," and one box to "Bert Anderson, Tama, Iowa," and said boxes and each of them were then and there billed by the defendant express company at Rock Island, Illinois, for said consignors at their request direct to said several consignees at Tama, Iowa, C. O. D. $3 00 on each package not including the cost of transportation.

That said packages or boxes and each of them were securely nailed and packed and neither of these defendants have any knowledge or information of what they or either of them contain.

That said packages or boxes and each of them were received by the defendant American Express Company as common carriers on said 29th day of March, 1900, from said consignors at said Rock Island, Illinois, for transportation interstate from said Rock Island, Illinois to said Tama, Iowa, consigned to the said several parties, W. E. Pauley, B. Anderson, Link Hartsock and G. Everhart, $3.00 C. O. D. to each, at Tama, Iowa, with express charges of forty-five cents on each package. That said packages were received at Tama, Iowa, March 31, 1900, by the defendant R. M. Coffin as the agent of the defendant express company, from said company, and were by said Coffin as such agent taken to his place of business, in his drug store in said Tama, Iowa, which place is the local office of the defendant American Express Company at said Tama, and said packages and each of them were still in transit, in the possession of the defendant express company and their agent the defendant R. M. Coffin, acting
for said company at their said office in Tama, Iowa, and
6 had never been delivered to consignees or either of them at the time they were seized by the officer in this proceeding and same have never been delivered to consignees or either of them.

That the defendant W. P. Crossman has not now and never had any interest in the property in controversy, nor was the same, or any of it, ever in his possession or under his control, except that same may have been left in the office of the defendant express company at Tama, Iowa, at some time while he the defendant W. P. Crossman was in charge of the store wherein said office is located, as the drug clerk and employee of the defendant Coffin. That the defend-

ant American Express Company, as a common carrier, has a lien for the express or transportation of said property from Rock Island, Illinois, to its office in Tama, Iowa, of forty-five cents on each box or package in controversy, no part of which has ever been paid.

That there are charges against each package or box in controversy in the sum of $3.00 each as a C. O. D. which the defendant express company is obligated to consignors to collect, from the several consignees, before delivering same or either of them, no part of which C. O. D. charges has ever been paid.

That these defendants nor either of them have any interest in the sale of the merchandise or contents of said several boxes, but the sole and only interest of defendants or either of them in the premises is in the performance of the duties, in the exercise of the privileges allowed them by law as common carriers engaged in transportation in the States of Illinois and Iowa, and other States interstate, and the property in controversy is yet in transit interstate, never having been delivered to consignees, and none of said property is kept
7 by defendants or either of them with intent to sell the same, and the seizure herein made is unlawful.

Wherefore defendants ask that the said property in controversy and each item or package thereof may be ordered returned to the defendant American Express Company or its agent at the local office of said company in Tama, Iowa, where same was seized; that the lien of the defendant express company of forty-five cents per package on each package herein for transportation of same may be protected; that the obligation of the defendant express company to collect and pay the consignors of said property $3.00 per package before delivery to consignees may be respected and protected, and that the costs herein may be taxed to the prosecuting complainant, and that these defendants may be dismissed without costs with judgment accordingly.

WILLETT & HUBER,
Attorneys for Defendants.

Thereupon the plaintiff and defendants having agreed upon the facts filed the following stipulation as to the facts to be considered on the hearing:

Stipulation.

It is hereby stipulated by the parties to the above entitled cause,

1st. That the defendant, The American Express Company, is a foreign corporation as alleged in defendants' answer.

2nd. That said defendant express company has not nor has it at any time had or held a permit or other authority to sell intoxicating liquors in Tama county, Iowa.

8 3rd. That the defendant R. M. Coffin is a registered pharmacist and holds a permit to sell intoxicating liquors for the purposes authorized by the laws of Iowa, but that he makes no

claim that such permit authorizes any delivery of intoxicating liquors by him as agent of said express company which may be received by him as the agent of his company, and consigned to parties who may call for the same at the office of said company, nor is the delivery of such liquors by him for the said express company in any wise conducted under the regulations and laws prescribed by the State of Iowa for the sale of intoxicating liquors by him as a registered pharmacist and permit holder.

4. That at the time the packages described in defendants' answer, which are the same packages seized under the warrant of seizure in this cause, were received for transportation by said express company, neither the defendant express company nor its agents or employees knew or had any knowledge that the said packages contained intoxicating liquors, nor did said express company, its employees or either of the other defendants Coffin and Crossman know or have any knowledge of the actual contents of said packages seized herein until after the seizure thereof.

5. It is conceded that said packages and each of them do contain intoxicating liquors of not less than one quart each, and that such liquors are in the original packages in which they were delivered to the defendant express company as a common carrier in the State of Illinois for transportation to Tama, Iowa.

6. That the charges of three dollars on each package, mentioned in defendants' answer is no part of the charges for transportation and no part of the compensation of said defendant express company for transporting the same, and that the said sum of three dollars is the purchase price of the goods contained in each package respectively, and that said express company is bound under its contract to collect for the shipper of said packages the said sum of three dollars on each package before delivering the same to the consignee and to transmit to said shipper the sum of three dollars on each package.

9

7. That the place of delivery of said packages to consignees is at the office of the said American Express Company in Tama, Tama county, Iowa, of which office the defendant R. M. Coffin is in charge as agent and at the time of the seizure herein none of said packages had been delivered to the consignees or either of them. That said packages and each of them were shipped by consignors to consignees on their orders, given to the traveling agent of consignors at Tama, Iowa, and by him sent in to consignors subject to their approval and shipment thereunder.

8. That in case the hearing of this cause should be on demurrer of plaintiff to defendants' answer, each of the above admitted facts shall be considered in connection with the answer as fully and have the same effect in law as if alleged in said answer or made a part thereof.

C. B. BRADSHAW,
Attorney for Plaintiff.
WILLETT & HUBER,
Attorneys for Defendants.

Thereupon the said cause was submitted on the information, answer of defendants and the stipulation aforesaid, and by consent of parties the court took the said cause and its submission under advisement until April 12, 1900, at which time the court rendered its decision and found that the packages of liquor seized under the warrant issued and in the custody of the officer, were each and all kept by the said defendants, The American Express Company and R. M. Coffin, for the purpose of being sold in violation of law, and rendered judgment that the said liquors and the vessels containing the same and now in the custody of the officer, be forfeited, and rendered judgment against said defendants for the costs of the proceeding, to all of which orders and judgments the defendants severally excepted and gave notice of appeal to the district court.

And afterwards, to-wit, on the 16th day of April, 1900, the defendants duly perfected their appeal to the district court of Tama county, Iowa.

Afterwards, to-wit, the defendants filed in the district court an amendment to their answer in words and figures following:

Amendment to Answer.

The defendants American Express Company and R. M. Coffin amend the second count of their answer herein and aver, that under the facts in this case as shown by the pleadings and stipulation on file, a Federal question arises under the Constitution of the United States, and laws of Congress, which they now affirmatively plead to-wit: the rights of the defendants engaged in interstate commerce as common carriers, and of the power of the State of Iowa over goods in transit from one State to another; and under the same the defendants insist that the liquors and packages in controversy
11 are not subject to seizure and destruction as claimed by the prosecution.

Wherefore defendants demand the return of the property seized herein and judgment for costs.

J. W. WILLETT,
Attorney for Defendants.

And afterwards, to-wit, on the 16th day of January, 1901, the said cause was fully submitted to the said district court, both parties waiving a jury, and the said cause was submitted on the information and answer of defendants and the written stipulation herein before set out, no other evidence being offered or introduced by either party, the stipulation aforesaid being all the evidence offered or received on the trial and submission of said cause.

Whereupon by consent of parties, the said cause was to be decided in vacation, and judgment entered as of the last day of the December term of the district court for the years 1900.

And afterward, to-wit, on the — day of February, 1901, the Honorable G. W. Burnham, judge of said district court, filed with the clerk of said court his decision of said cause in writing, finding that the said liquors were wrongfully seized and ordered that they be returned to the express company and that the State pay the costs of this prosecution, to all of which orders and judgment the State excepted, which exceptions were duly entered of record; that the said judgment was entered and rendered as of the last day of the December term 1900, to-wit, January 16th, 1901.

And afterward, to-wit, on the 23d day of March, 1901, the plaintiff perfected its appeal from the said judgment by duly serving upon the said defendants and their attorneys in the court below a
12 notice of appeal to the supreme court of Iowa, and by serving upon the clerk of the district court of Tama county, Iowa, a notice of such appeal to the supreme court of Iowa, and by securing to his satisfaction the fees required or that may be required for any record or transcript in said cause.

C. B. BRADSHAW,
Attorney for Appellant.

The cost of printing this abstract is $12.00.

I hereby certify that I am the attorney for appellant in this appeal and that the cost of printing this abstract is as above stated.

____ ____,
Attorney for Appellant.

Assignment of Errors.

The appellant, while not conceding that assignments of errors are required for a review of this cause on appeal, for the purpose of avoiding controversy as to such question, assigns the following errors:

1. The court erred in holding that the liquors seized were exempt from seizure under the interstate commerce provision of the Federal Constitution.
2. The court erred in its finding and judgment that the liquors were wrongfully seized.
3. The court erred in ordering the liquors seized to be returned to the defendant express company.
4. The court erred in rendering judgment against the plaintiff for costs of the proceeding.

C. B. BRADSHAW,
Attorney for Appellant.

13 (Copy.)

Filed Oct. 30, 1902.

In the Supreme Court of Iowa.

Appeal from Tama District Court, G. W. Burnham, Judge.

STATE OF IOWA, Appellant,
v.
AMERICAN EXPRESS COMPANY, R. M. COFFIN, and CERTAIN INTOXICATING LIQUORS.

Certain intoxicating liquors in the possession of the defendant Coffin as agent for the American Express Company at Tama were seized, and by the judgment of a justice of the peace were condemned and their destruction ordered, on the ground that they were being kept by defendants to be sold in violation of law. On appeal to the district court the liquors were ordered to be returned to the express company on the finding that said liquors were wrongfully seized, and from this judgment the State appeals.

Charles W. Mullan, attorney-general and C. B. Bradshaw, Chas. A. Van Vleck, ass't att'y gen. for appellant.
J. W. Willett and J. C. Cook, for appellee.

Per Curiam:

The facts out of which this controversy arose were as follows: Certain packages of intoxicating liquors, each containing one quart, were, in pursuance of orders received by John Cullom Co., dealer in intoxicating liquors at Rock Island, Illinois, delivered to the defendant express company to be transported to Tama and there to be delivered to the consignees named, on the payment of $3.00 and express charges on each package so shipped. The defendant express company had no knowledge that such packages contained intoxicating liquors, if that fact is material, and transported them to Tama, where they were then seized in the possession of the defendant Coffin as its agent. The simple question is whether the delivery of these packages to consignees would have constituted sales of the liquors at Tama, for if so, such liquors were held for the purpose of illegal sale in the State and were subject to forfeiture; or whether, on the other hand, the sales were made at Rock Island, and the liquors were in the possession of the defendant company merely for transportation and delivery to the consignees in pursuance of
14 such completed sales, for under this state of facts the liquors were in possession of the express company in the discharge of its functions in carrying on interstate commerce, and could not be seized under the State law, unless it be found that in accepting the

goods, and attempting to collect the purchase price, the company was not acting as a carrier simply, but was undertaking the performance of an act prohibited by our law.

If the act of the carrier in assuming to collect the purchase price be considered as a sale of the goods, or if it be found that such transaction on its part is not freed from the operation of our laws, by reason of being but a lawful step incident to interstate commerce, then the liquors should have been condemned. Whether a C. O. D. transaction should be deemed an absolute sale on the part of the vendor with a provision for with-holding delivery until actual payment, so as to preserve a lien for the price, or as an executory contract of sale which is not completed until actual delivery to the buyer, has been the subject of much diversity of opinion. See cases cited at pp. 300 and 301 of 17 Am. & Eng. Ency. of Law 2nd edition.

If the question were *res integra* in this State, a majority of the court, as now constituted, would be inclined to the view that under such a shipment, the carrier is the agent of the buyer for the purposes of transportation and of the seller for the purpose of retention of possession and collection of the purchase price, and that as a necessary corollary, title passes to the buyer on delivery to the carrier.

But the question is foreclosed in State *vs.* U. S. Ex. Co. 70 Ia. 271, wherein it is said: "They (the liquors) were carried by the express Co. and held by it for delivery to the parties on payment of the purchase price. They were therefore the property of the consignors and the express company was the agent of the consignors with authority to transfer the title to the property upon payment of the purchase price. The property was therefore contraband &c." It was also held in that case that want of knowledge on the part of the express company of the character of the goods was entirely immaterial. That opinion, which was written by Judge Rothrock, has stood unquestioned until this case, and several others like it, recently reached this court and would not no doubt at this time be challenged
15 but for the opinion in Rhodes *vs.* Iowa, 170 U. S. 412. That case in no manner militates against the conclusion reached in the express company case for the same court which announced that opinion in O'Neill *v.* Vermont, 144 U. S. 323; 36 L. Ed. p. 450 that the determination of the character of a C. O. D. transaction did not involve a Federal question and sustained not only a condemnation of liquors under precisely the same state of facts as appear in the case now before us, but also affirmed a judgment of conviction against an agent connected with the sale. Our 70 Iowa case is not without support in other jurisdictions. See State *vs.* O'Neill, 58 Vt. 140; State *vs.* Goss 6 Atl. Rep. 829; People *vs.* Shriver 23 Fed. 134; U. S. *vs.* Cline 26 Fed. 515; U. S. *v.* Chavallier, 170 Fed. 434; Baker *vs.* Bonecuauld, 1 Daly N. Y. 24; State *vs.* Wingfield, 115 Mo. 428; Crabb *vs.* State, 15 S. E. Rep. (Ga.) 455; Dunn *v.* State 8 S. E. Rep. Ga. 806; State *v.* Four Jugs, 2 Atl/ Rep. 586/; Wagner *v.* Hallack, 3 Colo. 176.

We are now asked to change the rule to the end that our prohibi-

tory liquor laws, passed in the exercise of the police power of the State, may be rendered less irksome, and express companies be allowed not only to transport liquors into the State, which of course they may do—but also collect the purchase price for the vendors. The baneful effect of such a decision is easily imagined. Every one knows that an over-ruling of the express company case would be followed by the establishment in every community of places for the sale of intoxicants which would be quite as harmful and free from regulation and restraint as were the "original package saloons" before the enactment of the Wilson bill.

The purpose and intent of that act is quite generally understood. That it was not intended to interfere with legitimate acts of transportation of property between the States, nor to prevent a resident of this State from shipping liquors into it from another State for his own consumption and use, is freely admitted. But it is just as clear to our minds that it was not the intention of Congress to authorize a carrier to engage not only in the transportation of property, but to act as an agent for the seller in completing the sale and collecting the purchase price.

Supported as we are in our position by respectable authority, *forefited* by the thought that we are upholding the policy of
16 this State toward the traffic in intoxicants, and fully believing that doctrine announced while not supported perhaps by the weight of judicial authority, is one which will do much good and no harm, we are constrained to adhere to it, on the broad ground of *stare decisis*, which is one of the safe guards of our judicial system. This conclusion relieves us from the necessity of considering the other question as to whether or not the goods are protected by reason of the commerce clause of the Federal Constitution. See the O'Neill case *supra*. However, some of the members of the court would reach same result, had it been found that the title to the property passed when delivered to the carrier in the State of Illinois. Conceding that to be true, they are of the opinion that the transaction was not in any fair sense interstate commerce, protected by the Constitution of the United States from State regulation. The express company in effect engaged in the business of selling through agents in this State at retail, intoxicating liquors, shipped by it for that purpose from the State of Illinois.

This was a mere device, as it seems to us, to evade the police laws of this Commonwealth; and that the doctrine of "original packages," or of freedom of interstate commerce, does not apply to a business of this character.

In assuming to collect the purchase price, and to hold possession until the price was paid, it was in no proper sense engaged in interstate commerce. Others of the court are of a contrary opinion; they think that the collection of the purchase price was a mere incident to the transportation of the goods, and that the case should be ruled by Rhodes *vs.* Iowa *supra*, in the event we were constrained to over rule the express company case 70 Iowa. None of us, as be-

fore observed, are disposed to question that decision at this time, and it follows that the judgment of the district court should be and is reversed.

[Endorsed:] No. —. In the supreme court of Iowa. The State of Iowa, appellant, *vs.* The American Express Company *et al.* appellees. Copy of opinion.

17 In the Supreme Court of Iowa, October Term, 1902.

Now on this 30th, day of October 1902 the following among other proceedings were had towit:

STATE OF IOWA, Appellant,
vs.
AMERICAN EXPRESS Co., R. M. COFFIN, and CERTAIN Intoxicating Liquors. } #21661.

Appeal from Tama district court.

In this cause the court being fully advised in the premises, file their written opinion reversing the judgment of the dist. court.

It is therefore considered by the court that the judgment of the court below be and it is hereby reversed and the cause is remanded for further proceedings (if any be required) in the dist. court in harmony with the opinion of this court and that a writ of *procedendo* issue accordingly.

It is further considered by the court that the appellee pay the costs of this appeal, taxed at $55.75 and that execution issue therefor.

18 The Supreme Court of the United States.

THE AMERICAN EXPRESS COMPANY and R. M. Coffin and Certain Intoxicating Liquors, Plaintiffs in Error,
against
THE STATE OF IOWA, Defendant in Error. } Error to the Supreme Court of the State of Iowa.

Assignment of Errors.

And now come the plaintiffs in error herein and file the following assignment of errors upon which they will rely in the Supreme Court of the United States in the above entitled case.

There is manifest error in the record and proceedings in said case and in the decision of the supreme court of Iowa, as follows:

I.

The supreme court of Iowa erred in that it refused to find that sections 2413, 2414, 2415 and 2416 of the Code of Iowa of 1897 and the seizure of the four packages containing intoxicating liquors and the proceedings against the same under the said sections of the Code of Iowa, were and are repugnant to the eight- section of article I of the Constitution of the United States, in respect of the power to regulate commerce among the several States.

II.

The supreme court of Iowa erred in that it refused to find that the four packages seized and condemned, were not subject to seizure and confiscation under sections 2413, 2414, 2415 and 2416 of the Code of Iowa of 1897, for the reason that said four packages were delivered to the American Express Company, as a carrier, at Rock Island in the State of Illinois, to be transported by said company from Rock Island in the State of Illinois to Tama in the State of Iowa, and there delivered to consignees named, and were, at the time of such seizure, still in the possession of the American Express Company at its local office at Tama, Iowa, in the original packages in which the same were shipped from the State of Illinois, awaiting delivery to the consignees.

19 III.

The supreme court of the State of Iowa erred in that it refused to find that the four packages containing intoxicating liquors, which were seized and condemned, were exempt from such seizure and confiscation under the eighth section of article I of the Constitution of the United States, for the reason that said four packages were delivered to the American Express Company, as a carrier, at Rock Island in the State of Illinois, to be transported by said company from Rock Island in the State of Illinois to Tama in the State of Iowa, and there delivered to consignees named, and were, at the time of such seizure, still in the possession of the American Express Company, at its local office at Tama, Iowa, in the original packages in which the same were shipped from the State of Illinois, awaiting delivery to the consignees.

IV.

The supreme court of Iowa erred in holding that the four packages containing intoxicating liquors, which were seized and condemned, were kept by the American Express Company to be sold, and were therefore, subject to seizure and confiscation under sections 2413, 2414, 2415 and 2416 of the Code of Iowa of 1897, for the reason that said four packages were held by the American Express Company, as a carrier only, the same having been received by said company at Rock Island in the State of Illinois, to be transported

by said company from Rock Island, in the State of Illinois, to Tama, in the State of Iowa, and there delivered to consignees named, upon the payment by them to the said company of the sum of three dollars upon each of said packages in addition to the charges for the transportation thereof and that said four packages, at the time of such seizure, were still in the possession of the American Express Company as such carrier, at its local office at Tama, Iowa, awaiting delivery to the consignees.

V.

The supreme court of Iowa erred in holding that, at the time the said four packages were seized, the American Express Company was not acting as a common carrier simply, but was undertaking the performance of an act prohibited by law.

20

VI.

The supreme court of Iowa erred in holding that, in receiving the said four packages so to be transported, the American Express Company was an agent of the consignors with authority to transfer the title to the said four packages upon payment of the purchase price.

VII.

The supreme court of Iowa erred in holding that, under the circumstances of said case, the American Express Company held the said four packages for sale within the said State of Iowa, or that a delivery thereof, within said State of Iowa, by the American Express Company, upon receipt of the said sums, in accordance with the terms of the said shipment, would have been a sale within said State of Iowa, it being conceded that the American Express Company and its agents had no knowledge that the said four packages contained intoxicating liquors.

VIII.

The supreme court of Iowa erred in holding that the absence of knowledge on the part of the American Express Company and its agents that the said four packages contained intoxicating liquors was immaterial, upon the question of the liability of the said company, to the judgment rendered.

IX.

The supreme court of Iowa erred in not holding that the seizure of the four packages containing intoxicating liquors and the proceeding against the same under sections 2413, 2414, 2415 and 2416 of the Code of Iowa of 1897, were in violation of the rights of the American Express Company under the eighth section of article I of the Constitution of the United States, in respect of the power to regulate commerce among the several States.

X.

The supreme court of Iowa erred in holding that no Federal question was involved in this case.

XI.

The supreme court of Iowa erred in not ordering the said four packages containing intoxicating liquors, which were seized and condemned, to be returned to the American Express Company and R. M. Coffin.

21 XII.

The supreme court of Iowa erred in not rendering judgment against the State of Iowa for the cost of the proceeding prosecuted against the four packages seized and condemned.

XIII.

The supreme court of Iowa erred in ordering judgment in favor of the State of Iowa and against the American Express Company and R. M. Coffin.

JAMES W. WILLETT,
Attorney for Plaintiff in Error.

[Endorsed:] In the Supreme Court of the United States—The American Express Company, R. M. Coffin and Certain Intoxicating Liquors, plaintiffs in error against The State of Iowa defendant in error Filed Jun- 10 1903 Jno. C. Crockett clerk supreme court. James W. Willett, attorney for pl'ffs in error.

22 Know all men by these presents, that we, the American Express Company, an unincorporated joint stock association, as principal, and the Lawyers Surety Company of New York, as surety, are held and firmly bound unto the State of Iowa in the full and just sum of five hundred dollars, to be paid to the said State of Iowa, its certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 28th day of May, in the year of our Lord one thousand nine hundred and three.

Whereas, lately at a session of the supreme court of the State of Iowa in a suit depending in said court, between the said State of Iowa as appellant and The American Express Company, and R. M. Coffin and Certain Intoxicating Liquors, as appellees a judgment was rendered against the said American Express Company and R. M. Coffin and Certain Intoxicating Liquors, and the said American Express Company and R. M. Coffin having obtained a writ of error and

filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said State of Iowa citing and admonishing it to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, that if the said American Express Company and R. M. Coffin shall prosecute said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

AMERICAN EXPRESS COMPANY, [SEAL.]
By JAMES C. FARGO, *As President.* [SEAL.]
THE LAWYERS' SURETY COMPANY [SEAL.]
OF NEW YORK,
By GEORGE E. HAYES, *Vice-President.*

Attest:

[Seal of the Lawyers' Surety Company of New York.]

LOUIS E. KUSTER,
Acting Secretary.

Sealed and delivered in presence of—

WILLIAM C. FARGO,
Ass't Sec'y Am. Ex. Co.
H. G. HINTON,
As to L. S. Co.

Approved:

DAVID J. BREWER,
Associate Justice of the Sup. Court U. S.

Approved by—

[Seal of U. S. Circuit Court, South. Dist. of New York.]

JOHN. A. SHIELDS,
Clerk Circuit Court of the United States, Southern District of New York.

[Endorsed:] Filed Jun- 10 1903 Jno. C. Crockett clerk supreme court.

23 In the Supreme Court of Iowa.

THE STATE OF IOWA, Appellant,
against
THE AMERICAN EXPRESS COMPANY and R. M. COFFIN and Certain Intoxicating Liquors, Appellees. } At Law.

Petition for Allowance of Writ of Error.

To the Honorable David J. Brewer, associate justice of the Supreme Court of the United States:

The petition of the American Express Company and R. M. Coffin respectfully shows:

That the American Express Company is an unincorporated joint stock association engaged as a common carrier, in the transportation of goods, wares and merchandise between the various States of the United States, with general offices in New York city, having also, among other places, a local office in the township of Tama, Tama county, Iowa. That R. M. Coffin was on the 31st day of March, 1900, and for a long time prior thereto had been, the local agent of the said American Express Company at Tama, Iowa.

That on the 31st day of March, 1900, an information in the name of the State of Iowa and against the said American Express Company and R. M. Coffin was filed in the office of A. W. Guern-
24 sey, a justice of the peace in and for Tama township, Tama county, Iowa, in pursuance of which information, four packages in the possession of the American Express Company at its local office at Tama, which were said to contain intoxicating liquors, were seized, and a suit was thereupon commenced and prosecuted in the name of the State of Iowa against the American Express Company and R. M. Coffin, to condemn the said four packages and to cause them to be destroyed in pursuance of and under sections 2413, 2414, 2415, and 2416 of the Code of Iowa of 1897, copies of which sections are hereto attached and marked Exhibits A, B, C, and D, and made part of this petition.

That said cause came on to be tried, and the parties thereto duly appeared therein, and submitted said cause to the said justice's court, and that thereafter, the said justice's court rendered its decision therein, whereby it found that the said four packages seized under the warrant issued upon the information, and in the custody of the officer, contained intoxicating liquors, and were each and all kept by the said American Express Company and R. M. Coffin, for the purpose of being sold in violation of law, and rendered judgment that the said liquors and the vessels containing the same be forfeited, and also rendered judgment against the said American Express Company and R. M. Coffin for the costs of the proceeding.

That the said American Express Company and R. M. Coffin duly excepted to the order and judgment of the said justice's court, and appealed therefrom to the district court of Tama county,
25 Iowa. That, thereafter, said cause came on to be heard before said district court and was duly submitted to the said district court, and thereafter, judgment was entered in the said district court, whereby it was adjudged that the said four packages were wrongfully seized, and ordered that they be returned to the American Express Company and R. M. Coffin, and that the State of Iowa pay the costs of the prosecution. That the State of Iowa thereupon appealed from the said judgment and order of the said district court, to the supreme court of the State of Iowa, and an abstract of the record of said cause was filed in the said supreme court of Iowa at the May term thereof, 1901, by the appellant therein, which abstract contains the whole record of the said cause as submitted upon the said appeal to the supreme court of Iowa, a certified copy of which is annexed to this petition and made a part hereof, and marked Exhibit E. That the said cause came on to be heard before the supreme court of Iowa, and was duly argued and submitted to said court, and thereafter, on the 30th day of October, 1902, the supreme court of Iowa rendered its decision, whereby it reversed the decision of the district court of Tama county, Iowa, and in pursuance of said decision, judgment was entered in favor of the State of Iowa and against the American Express Company and R. M. Coffin. That the supreme court of Iowa is the highest court of law or equity of said State of Iowa, in which a decision could be had in said cause. That a copy of said decision is hereto annexed and marked Exhibit F. and made a part hereof. That the said four packages were received by the American Express Company, as a common carrier,
26 at Rock Island, Illinois, to be transported by it from Rock Island to Tama, Iowa, and were addressed and consigned to certain persons at Tama, Iowa, and were to be delivered to such persons upon the payment by them to the American Express Company of the sum of $3.00 upon each of said packages, in addition to the charges for the transportation thereof and the collection and return of the said sums of $3.00 to the consignors at Rock Island, Illinois. That the said four packages were transported to Tama, Iowa, and were received at the local office of the American Express Company at Tama, Iowa, and at the time they were seized, they were in the custody of R. M. Coffin, the local agent of the American Express Company at Tama, Iowa, awaiting delivery to the several consignees named.

That the said four packages did, in fact, contain intoxicating liquors, but that such fact was not known to the American Express Company, nor to its agents at Tama, Iowa.

That in said cause, and upon the hearing before the district court of Tama county, Iowa, and upon the hearing in the supreme court of Iowa, the American Express Company and R. M. Coffin claimed that sections 2413, 2414, 2415 and 2416 of the Code of Iowa of 1897,

and the seizure of the said four packages and the proceeding against the same thereunder, were invalid and unconstitutional upon the ground that they were repugnant to and in contravention of the 8th section of article I of the Constitution of the United States in respect of the power to regulate commerce among the several States; and claimed the right, under said provision of the Constitution of
the United States, to carry the said four packages from the
27 State of Illinois to the State of Iowa, and there to deliver the same to the consignees named, and to collect and remit the several amounts to be collected thereupon.

That the decision of the supreme court of Iowa was in favor of the validity of sections 2413, 2414, 2415 and 2416 of the Code of Iowa of 1897, and was against the right set up and claimed by the American Express Company and R. M. Coffin.

That in the record and proceedings in said cause and in the decision of the supreme court of Iowa, certain errors were committed, all of which will more fully appear by reference to an assignment of errors which is hereto annexed and marked Exhibit "G" and made a part hereof.

Wherefore your petitioners pray that you endorse hereon, an order allowing the issuing of a writ of error to remove the record of said cause to the Supreme Court of the United States for review, in accordance with the provisions of section 709 of the Revised Statutes of the United States of 1878, and that a citation may issue under the seal of the said court, directed to the said State of Iowa, as required by the rules and practice of said court.

And your petitioners will ever pray.

AMERICAN EXPRESS COMPANY,
By JAMES C. FARGO, *President.*
R. M. COFFIN.

28 STATE OF IOWA, }
County of Tama, } *ss:*

R. M. Coffin, being duly sworn, says that he is one of the petitioners above named; that he is the agent of the American Express Company at Tama, Iowa, and signed the foregoing petition; that he has read the same and the exhibits thereto attached and knows the contents thereof, and that the same is true.

R. M. COFFIN.

Sworn to before me this 25th day of April 1903.

[Notarial Seal of D. E. Goodell, Iowa.]

D. E. GOODELL,
Notary Public in and for Tama County, Ia.

Writ of error allowed May 4th 1903

DAVID J. BREWER,
Associate Justice Sup. Ct. U. S.

29 EXHIBIT "A."

Code sec. 2413—Search warrant—Seizure.—If any credible resident of any county shall, before a justice of the peace for the same county, make written information, supported by his oath or affirmation that he has reason to believe, and does believe, that any intoxicating liquor, described as particularly as may be in said information, owned or kept by any person named or described in said information as particularly as may be, and is intended by him to be sold in violation of the provisions of this chapter, said justice shall, upon finding probable cause for such information, issue his warrant of search, directed to any peace officer in the county, describing as particularly as may be the liquor and the place described in said information as the owner or keeper of said liquor, and commanding the said officer to search thoroughly said place, and to seize the said liquor with the vessels containing it, and to keep the same securely until final action be had thereon; whereupon the said peace officer to whom such warrant shall be delivered shall forthwith obey and execute, as effectually as possible, the commands of said warrant, and make return of his doings to said justice, and shall securely keep all liquors so seized by him and the vessels containing them until final action be had thereon. If the place to be searched be a dwelling house in which any family resides, and in which no tavern, eating house, grocery or other place of public resort is kept, such warrant shall not be issued unless said complaint shall, on oath or affirmation, declare before said justice that he has reason to believe and does believe that within one month next before making of said information intoxicating liquor has been in violation of this chapter, sold in said house, or in some dependency thereof, by the person accused in said information, or by his consent or permission;
30 nor unless from the facts and circumstances disclosed by such complaint, the said justice shall be of the opinion that said complaint has adequate reason for such belief.

EXHIBIT "B."

Code sec. 2414—Information for search warrant—Defects.—The information and search warrant in such case shall describe, with reasonable particularity, the place to be searched, as well as the liquors to be seized. When any liquors shall have been seized by virtue of any such warrant, the same shall not be discharged or returned to any person claiming the same by reason of any alleged insufficiency of description in the warrant of the liquor or place, but the claimant shall only have a right to be heard on the merits of the case.

EXHIBIT "C."

Code sec. 2415—Notice—Trial—Judgment—Appeal.—In the event of a seizure under said warrant, the officer shall forthwith make a return of his acts thereunder, and within forty-eight hours thereafter the justice who issued the warrant shall cause to be left at the place where said liquor was seized, if said place be a dwelling house, store or shop, posted in some conspicuous place on or about said buildings, and also to be left with or at the last known and usual place of residence of the person named or described in said information as the owner or keeper of said liquor, if he be a resident of this State, a notice, summoning such person, and all others whom it may concern, to appear before said justice at a place and time named in said notice, which time shall not be less than five nor more than fifteen days after the posting and leaving of said notices, and show cause, if any they have,
31 why said liquor together with the vessels in which the same is contained, should not be forfeited; and said notice shall, with reasonable certainty, describe said liquor and vessels, and shall state where, when and why the same were seized. At the time and place prescribed in said notice, the person named in said information, or any other person claiming an interest in said liquor and vessels, or any part thereof, may appear and show cause why the same should not be forfeited. If any person shall so appear, he shall become a party defendant in said cause, and said justice shall make a record thereof. Whether any person shall so appear or not, said justice shall, at the prescribed time, proceed to the trial of said case, and said complainants or either of them may, and upon their default the officer having such liquor in custody shall, appear before said justice and prosecute said information, and show cause why such liquor should be adjudged forfeited.

The proceeding in the trial of such case may be the same, substantially, as in cases of misdemeanor triable before justices of the peace, and if any person shall appear and be made a party defendant as herein provided, and shall make written plea that said liquor or a part thereof claimed by him, was not owned or kept with intent to be sold in violation of this chapter, such party defendant may, at his option, demand a jury to try the issue, and if, upon the evidence presented, the said justice or jury, as the case may be, shall by verdict, find that said liquor was, when seized owned or kept by any person, whether said party defendant or not, for the purpose of being sold in violation of this chapter, the said justice shall render judgment that said liquor, or said part thereof, with the vessels in which it is contained, is forfeited. If no person be made de-
32 fendant in manner aforesaid, or if judgment be in favor of all the defendants who appear and are made such, then the costs of the proceeding shall be paid as in ordinary criminal prose-

cutions where the prosecution fails. If the judgment shall be against only one party defendant appearing as aforesaid, he shall be adjudged to pay all the costs of proceedings in the seizure and detention of the liquor claimed by him, and trial, up to the time of judgment. But if such judgment shall be against more than one party defendant claiming distinct interests in said liquor, then the costs of said proceedings and trial shall be, according to the discretion of said justice, equitably apportioned among said defendants, and execution shall be issued on said judgments against said defendants, for the amount of the costs so adjudged against them. Any person appearing and becoming party defendant as aforesaid may appeal from said judgment of forfeiture, as to the whole or any part of said liquor and vessels claimed by him and so adjudged forfeited, to the district court, as in ordinary cases of misdemeanor.

33 EXHIBIT "D."

Code sec. 2416—Destruction of liquor and vessels.—Whenever it shall be finally decided that liquor seized as aforesaid is forfeited, the court rendering final judgment of forfeiture shall issue to the officer having said liquors in custody, or to some other peace officer, a written order, directing him forthwith to destroy said liquor and vessels containing the same, and immediately thereafter to make return of said order to the court whence issued, with his doings indorsed thereon. Whenever it shall be finally decided that any liquor so seized is not liable to forfeiture, the court by whom such final decision shall be rendered shall issue a written order to the officer having the same in custody, or to some other peace officer, to restore said liquor with the vessels containing the same, to the place where it was seized, as nearly as may be, or to the person entitled to receive it, which order the officer shall obey, and make return thereon to the court of his acts thereunder, and the costs of the proceeding in such case attending the restoration, as also the costs attending the destruction of such liquor in case of forfeiture, shall be taxed and paid in the same manner as is provided in case of ordinary criminal prosecutions where the prosecution fails.

34 "EXHIBIT E."

In the Supreme Court of Iowa, May Term, A. D. 1901.

THE STATE OF IOWA, Appellant,
vs.
THE AMERICAN EXPRESS COMPANY and R. M. COFFIN, Appellees. } At Law.

Appeal from Tama district court, Hon. G. W. Burnham, judge.

C. B. Bradshaw for appellant.
J. W. Willett for appellee.

Appellant's Abstract.

35 On the 31st day of March, 1900, an information was filed in the office of A. W. Guernsey, a justice of the peace, in Tama township, Tama county, Iowa, charging the defendants above named with keeping intoxicating liquors in said county with intent to sell the same in violation of law, which information is in words and figures as follows:

STATE OF IOWA, *Tama County,* } *ss:*

I, B. A. Hall, being duly affirmed, depose and say that I am a resident of Tama county, Iowa; that at the time the original information was filed in this cause, I had reason to believe, and did believe, and still believe that certain intoxicating liquors, to-wit: whisky, brandy and wine were at the time said information was filed, kept in the office of the American Express Company at the city of Tama, in said county of Tama, which office is kept in the building occupied by the defendant R. M. Coffin as a drug store in said city of Tama, which intoxicating liquors were at the time aforesaid kept by said American Express Co. and the said defendants Coffin and Crossman, as its agents, in packages addressed to S. L. Hartsock, Geo. Everhard, Burt Anderson, W. E. Pauley and other persons to this informant unknown, which intoxicating liquors were at the time aforesaid, by the American Express Company and its Iowa agents, kept and intended by said defendants and each of them to be sold in violation of the laws of Iowa.

B. A. HALL.

Duly affirmed before A. W. Guernsey, J. P.

Thereupon the said justice of the peace issued a warrant to W. T. Hollen, a constable in aforesaid county, directing him to
36 search the premises described in said information, and to seize the packages and liquors with the vessels containing them, and to keep the same until final action thereon.

The said constable on the 2nd day of April, 1900, returned said warrant into court showing that pursuant thereto he had searched the premises, found and seized four packages of intoxicating liquors in the office of the American Express Company, in Tama, Iowa, in the building occupied by R. M. Coffin as a drug store and as the office of said American Express Company; and that he then held said liquors subject to the further order of the court.

Due notice having been given by the said justice to the defendants herein of the seizure of said intoxicating liquors, and the said defendants having been duly summoned to appear before the said justice on the 9th day of April, 1900, to show cause why the liquors and vessels seized as aforesaid should not be forfeited and condemned, the cause came on for hearing before said justice on the 9th day of April, 1900, C. B. Bradshaw appearing as attorney for the plaintiff and Willett & Huber appearing as attorneys for the defendants.

The defendants at the same time filed in said cause the following

Answer.

First count.

Now come the defendants in the above entitled cause and for answer to the substituted information filed herein, deny each and every allegation and statement thereof, except as may be hereinafter admitted or otherwise denied.

37 Defendants admit that said R. M. Coffin is the agent of said American Express Company, at Tama, Tama county, Iowa.

Defendants admit that the prosecuting witness, B. A. Hall, on the 2nd day of April, A. D. 1900 was and still is a resident of Tama county, Iowa.

Second count.

Further answering said substituted information, these defendants state that The American Express Company, one of the defendants herein is a foreign corporation organized under the laws of the State of New York, for pecuniary profit with its principal office located in New York city, N. Y.

That the defendant R. M. Coffin is the local agent at Tama, Tama county, Iowa for his co-defendant American Express Company, and has been such agent for many years last past.

That the defendant W. P. Crossman is an employé of his co-

defendant R. M. Coffin at said Tama, and clerks in the drug store of said Coffin thereat, and sometimes in the absence of said Coffin handles the express of the defendant American Express Company thereat.

That the defendant American Express Company, the corporation aforesaid, is a common carrier, and as such common carrier is engaged in the rapid transportation of merchandise, personal property and other articles and commodities, in the State of Iowa, and interstate between the several States.

That on or about the 29th day of March, 1900, the defendant American Express Company, as a common carrier received from John Cullom & Co., consignors at the city of Rock Island in the State of Illinois, four boxes said to contain merchandise,
38 marked by consignors direct to the several consignees as follows to wit: One box to "W. E. Pauley, Tama, Iowa," one box to "Geo. Everhart, Tama, Iowa," one box to "Link Hartsock, Tama, Iowa," and one box to "Bert Anderson, Tama, Iowa," and said boxes and each of them were then and there billed by the defendant express company at Rock Island, Illinois, for said consignors at their request direct to said several consignees at Tama, Iowa, C. O. D. $3 00 on each package not including the cost of transportation.

That said packages or boxes and each of them were securely nailed and packed and neither of these defendants have any knowledge or information of what they or either of them contain.

That said packages or boxes and each of them were received by the defendant American Express Company as common carriers on said 29th day of March, 1900, from said consignors at said Rock Island, Illinois, for transportation interstate from said Rock Island, Illinois to said Tama, Iowa, consigned to the said several parties, W. E. Pauley, B. Anderson, Link Hartsock and G. Everhart, $3.00 C. O. D. to each, at Tama, Iowa, with express charges of forty-five cents on each package. That said packages were received at Tama, Iowa, March 31, 1900, by the defendant R. M. Coffin as the agent of the defendant express company, from said company, and were by said Coffin as such agent taken to his place of business, in his drug store in said Tama, Iowa, which place is the local office of the defendant American Express Company at said Tama, and said packages and each of them were still in transit, in the possession of the defendant express company and their agent the defendant R. M. Coffin, acting for said company at their said office in Tama, Iowa, and
39 had never been delivered to consignees or either of them at the time they were seized by the officer in this proceeding and same have never been delivered to consignees or either of them.

That the defendant W. P. Crossman has not now and never had any interest in the property in controversy, nor was the same, or any of it, ever in his possession or under his control, except that same may have been left in the office of the defendant express company at Tama, Iowa, at some time while he the defendant W. P. Crossman was in charge of the store wherein said office is located, as the

drug clerk and employee of the defendant Coffin. That the defendant American Express Company, as a common carrier, has a lien for the express or transportation of said property from Rock Island, Illinois, to its office in Tama, Iowa, of forty-five cents on each box or package in controversy, no part of which has ever been paid.

That there are charges against each package or box in controversy in the sum of $3.00 each as a C. O. D. which the defendant express company is obligated to consignors to collect, from the several consignees, before delivering same or either of them, no part of which C. O. D. charges has ever been paid.

That these defendants nor either of them have any interest in the sale of the merchandise or contents of said several boxes, but the sole and only interest of defendants or either of them in the premises is in the performance of the duties, in the exercise of the privileges allowed them by law as common carriers engaged in transportation in the States of Illinois and Iowa, and other States interstate, and the property in controversy is yet in transit interstate, never having been delivered to consignees, and none of said property is kept
40 by defendants or either of them with intent to sell the same, and the seizure herein made is unlawful.

Wherefore defendants ask that the said property in controversy and each item or package thereof may be ordered returned to the defendant American Express Company or its agent at the local office of said company in Tama, Iowa, where same was seized; that the lien of the defendant express company of forty-five cents per package on each package herein for transportation of same may be protected; that the obligation of the defendant express company to collect and pay the consignors of said property $3.00 per package before delivery to consignees may be respected and protected, and that the costs herein may be taxed to the prosecuting complainant, and that these defendants may be dismissed without costs with judgment accordingly.

WILLETT & HUBER,
Attorneys for Defendants.

Thereupon the plaintiff and defendants having agreed upon the facts filed the following stipulation as to the facts to be considered on the hearing:

Stipulation.

It is hereby stipulated by the parties to the above entitled cause,
1st. That the defendant, The American Express Company, is a foreign corporation as alleged in defendants' answer.

2nd. That said defendant express company has not nor has it at any time had or held a permit or other authority to sell intoxicating liquors in Tama county, Iowa.

41 3rd. That the defendant R. M. Coffin is a registered pharmacist and holds a permit to sell intoxicating liquors for the purposes authorized by the laws of Iowa, but that he makes no

claim that such permit authorizes any delivery of intoxicating liquors by him as agent of said express company which may be received by him as the agent of his company, and consigned to parties who may call for the same at the office of said company, nor is the delivery of such liquors by him for the said express company in any wise conducted under the regulations and laws prescribed by the State of Iowa for the sale of intoxicating liquors by him as a registered pharmacist and permit holder.

4. That at the time the packages described in defendants' answer, which are the same packages seized under the warrant of seizure in this cause, were received for transportation by said express company, neither the defendant express company nor its agents or employees knew or had any knowledge that the said packages contained intoxicating liquors, nor did said express company, its employees or either of the other defendants Coffin and Crossman know or have any knowledge of the actual contents of said packages seized herein until after the seizure thereof.

5. It is conceded that said packages and each of them do contain intoxicating liquors of not less than one quart each, and that such liquors are in the original packages in which they were delivered to the defendant express company as a common carrier in the State of Illinois for transportation to Tama, Iowa.

6. That the charges of three dollars on each package, mentioned in defendants' answer is no part of the charges for transportation and no part of the compensation of said defendant express company for transporting the same, and that the said sum of three dollars is the purchase price of the goods contained in each package respectively, and that said express company is bound under its contract to collect for the shipper of said packages the said sum of three dollars on each package before delivering the same to the consignee and to transmit to said shipper the sum of three dollars on each package.

42

7. That the place of delivery of said packages to consignees is at the office of the said American Express Company in Tama, Tama county, Iowa, of which office the defendant R. M. Coffin is in charge as agent and at the time of the seizure herein none of said packages had been delivered to the consignees or either of them. That said packages and each of them were shipped by consignors to consignees on their orders, given to the traveling agent of consignors at Tama, Iowa, and by him sent in to consignors subject to their approval and shipment thereunder.

8. That in case the hearing of this cause should be on demurrer of plaintiff to defendants' answer, each of the above admitted facts shall be considered in connection with the answer as fully and have the same effect in law as if alleged in said answer or made a part thereof.

C. B. BRADSHAW,
Attorney for Plaintiff.
WILLETT & HUBER,
Attorneys for Defendants.

Thereupon the said cause was submitted on the information, answer of defendants and the stipulation aforesaid, and by con-
43 sent of parties the court took the said cause and its submission under advisement until April 12, 1900, at which time the court rendered its decision and found that the packages of liquor seized under the warrant issued and in the custody of the officer, were each and all kept by the said defendants, The American Express Company and R. M. Coffin, for the purpose of being sold in violation of law, and rendered judgment that the said liquors and the vessels containing the same and now in the custody of the officer, be forfeited, and rendered judgment against said defendants for the costs of the proceeding, to all of which orders and judgments the defendants severally excepted and gave notice of appeal to the district court.

And afterwards, to-wit, on the 16th day of April, 1900, the defendants duly perfected their appeal to the district court of Tama county, Iowa.

Afterwards, to-wit, the defendants filed in the district court an amendment to their answer in words and figures following:

Amendment to Answer.

The defendants American Express Company and R. M. Coffin amend the second count of their answer herein and aver, that under the facts in this case as shown by the pleadings and stipulation on file, a Federal question arises under the Constitution of the United States, and laws of Congress, which they now affirmatively plead to-wit: the rights of the defendants engaged in interstate commerce as common carriers, and of the power of the State of Iowa over goods in transit from one State to another; and under the same the defendants insist that the liquors and packages in controversy
44 are not subject to seizure and destruction as claimed by the prosecution.

Wherefore defendants demand the return of the property seized herein and judgment for costs.

J. W. WILLETT,
Attorney for Defendants.

And afterwards, to-wit, on the 16th day of January, 1901, the said cause was fully submitted to the said district court, both parties waiving a jury, and the said cause was submitted on the information and answer of defendants and the written stipulation herein before set out, no other evidence being offered or introduced by either party, the stipulation aforesaid being all the evidence offered or received on the trial and submission of said cause.

Whereupon by consent of parties, the said cause was to be decided in vacation, and judgment entered as of the last day of the December term of the district court for the years 1900.

And afterward, to-wit, on the — day of February, 1901, the Honorable G. W. Burnham, judge of said district court, filed with the clerk of said court his decision of said cause in writing, finding that the said liquors were wrongfully seized and ordered that they be returned to the express company and that the State pay the costs of this prosecution, to all of which orders and judgment the State excepted, which exceptions were duly entered of record; that the said judgment was entered and rendered as of the last day of the December term 1900, to-wit, January 16th, 1901.

And afterward, to-wit, on the 23d day of March, 1901, the plaintiff perfected its appeal from the said judgment by duly serving upon the said defendants and their attorneys in the court below a
45 notice of appeal to the supreme court of Iowa, and by serving upon the clerk of the district court of Tama county, Iowa, a notice of such appeal to the supreme court of Iowa, and by securing to his satisfaction the fees required or that may be required for any record or transcript in said cause.

C. B. BRADSHAW,
Attorney for Appellant.

The cost of printing this abstract is $12.00.

I hereby certify that I am the attorney for appellant in this appeal and that the cost of printing this abstract is as above stated.

C. B. BRADSHAW,
Attorney for Appellant.

Assignment of Errors.

The appellant, while not conceding that assignments of errors are required for a review of this cause on appeal, for the purpose of avoiding controversy as to such question, assigns the following errors:

1. The court erred in holding that the liquors seized were exempt from seizure under the interstate commerce provision of the Federal Constitution.
2. The court erred in its finding and judgment that the liquors were wrongfully seized.
3. The court erred in ordering the liquors seized to be returned to the defendant express company.
4. The court erred in rendering judgment against the plaintiff for costs of the proceeding.

C. B. BRADSHAW,
Attorney for Appellant.

46

EXHIBIT F.

Filed Oct. 30th, 1902.

In the Supreme Court of Iowa.

STATE OF IOWA, Appellant,
vs.
AMERICAN EXPRESS COMPANY, R. M. COFFIN, and Certain Intoxicating Liquors. } # 21661.

Certain intoxicating liquors in the possession of the defendant Coffin as agent for the American Express Company at Tama were seized, and by judgment of a justice of the peace were condemned and their destruction ordered, on the ground that they were being kept by defendants to be sold in violation of law.

On appeal to the district court the liquors were ordered to be returned to the express company on the finding that said liquors were wrongfully seized, and from this judgment the State appeals.

Charles W. Mullan, attorney-general and C. B. Bradshaw, Charles A. Van Vleck, ass't att'y gen. for appellant.

J. W. Willett and J. C. Cook, for appellee.

Per Curiam:

The facts out of which this controversy arose were as follows: Certain packages of intoxicating liquors, each containing one quart, were, in pursuance of orders received by John Cullom Co., dealer- in intoxicating liquors at Rock Island, Illinois, delivered to the
47 defendant express company to be transported to Tama and there to be delivered to the consignees named, on the payment of $3.00 and express charges on each package so shipped. The defendant express company had no knowledge that such packages contained intoxicating liquors, if that fact is material, and transported them to Tama, where they then were seized in the possession of the defendant Coffin as its agent. The simple question is whether the delivery of these packages to consignee- would have constituted sales of the liquors at Tama, for if so, such liquors were held for the purpose of illegal sale in the State and were subject to forfeiture; or whether, on the other hand, the sales were made at Rock Island, and the liquors were in the possession of the defendant company merely for transportation and delivery to the consignees in pursuance of such completed sales, for under this state of facts the liquors were in possession of the express company in the discharge of its functions in carrying on inter-state commerce; and could not be seized under the State law, unless it be found that in accepting the goods, and attempting to collect the purchase price, the company

was not acting as a carrier simply, but was undertaking the performance of an act prohibited by our law.

If the act of the carrier in assuming to collect the purchase price be considered as a sale of the goods, or if it be found that such transaction on its part is not freed from the operation of our laws, by reason of being but a lawful step incident to inter-state commerce, then the liquors should have been condemned.

Whether a C. O. D. transaction should be deemed an absolute sale on the part of the vendor with a provision for withholding delivery until actual payment, so as to preserve a lien, for the price, or as an executory contract of sale which is not completed until actual delivery to the buyer, has been the subject of much diversity of opinion. See cases cited at pp. 300 and 301 of 17 Am. & Eng. Ency. of Law, 2nd edition.

48 If the question were *res intergra* in this State, a majority of the court, as now constituted, would be inclined to the view that under such a shipment, the carrier is the agent of the buyer for the purposes of transportation, and of the seller for the purpose of retention of possession and collection of the purchase price, and that as a necessary corollary title passes to the buyer on delivery to the carrier.

But the question is foreclosed in State *vs.* United States Express Co. 70 Ia. 271, wherein it is said: "They (the liquors) were carried by the express company and held by it for delivery to the parties on payment of the purchase price. They were therefore the property of the consignors and the express company was the agent of the consignors with authority to transfer the title to the property upon payment of the purchase price. The property was therefore contraband &c." It was also held in that case that want of knowledge on the part of the express company of the character of the goods was entirely immaterial. The opinion, which was written by Judge Rothrock, has stood unquestioned until this case, and several others like it, recently reached this court and would not no doubt at this time be challenged but for the opinion in Rhodes *vs.* Iowa, 170 U. S. 412. That case in no manner militates against the conclusion reached in the express company case for the same court which announced that opinion held in O'Neill *vs.* Vermont, 144 U. S. 323; 36 L. Ed. p. 450 that the determination of the character of a C. O. D. transaction did not involve a Federal question and sustained not only a condemnation of liquors under precisely the same state of facts as appear in the case before us now, but also affirmed a judgment of conviction against an agent connected with the sale.

Our 70 Iowa case is not without support in other jurisdictions. See State *vs.* O'Neill, 58 Vt. 140; State *vs.* Goss 6 Atl. Rep. 829; People *vs.* Shriver 23 Fed. 134; U. S. *vs.* Cline 26 Fed. 515;
49 U. S. *vs.* Chavallier, 107 Fed. 434; Baker *vs.* Bonecuauld, 1 Daly N. Y. 24; State *vs.* Wingfield, 115 Mo. 428; Crabb *vs.* State, 15 S. E. Rep. (Ga.) 455; Dunn *vs.* State 8 S. E. Rep. Ga. 809; State *vs.* Four Jugs, 2 Atl. Rep. 586; Wagner *vs.* Hallack, 3 Colo. 176.

We are now asked to change the rule to the end that our prohibitory liquor laws, passed in the exercise of the police power of the State, may be rendered less irksome, and express companies be allowed not only to transport liquors into the State, which of course they may do—but also to collect the purchase price for the vendors. The baneful effect of such a decision is easily imagined. Every one knows that an overruling of the express company case would be followed by the establishment in every community of places for the sale of intoxicants which would be quite harmful and free from regulation and restraint as were the "original package saloons" before the enactment of the Wilson bill.

The purpose and intent of that act is quite generally understood. That is was not intended to interfere with legitimate acts of transportation of property between the States, nor to prevent a resident of this State from shipping into it from another State for his own consumption and use, is freely admitted. But it is just as clear to our minds that it was not the intention of Congress to authorize a carrier to engage not only in the transportation of property, but to act as an agent for the seller in completing the sale and collecting the purchase price.

Supported as we are in our position by respectable authority, *forefited* by the thought that we are upholding the policy of this State toward the traffic in intoxicants, and fully believing that the doctrine announced while not supported perhaps by the weight of judicial authority, is one which will do much good and no harm, we are constrained to adhere to it, on the broad ground of *stare decisis*, which is one of the safeguards of our judicial system.

This conclusion relieves us from the necessity of considering the other question as to whether or not the goods are protected by reason of the commerce clause of the Federal Constitution. See the O'Neill case *supra*. However, some of the members of the court would reach the same result, had it been found that the title to the property passed when delivered to the carrier in the State of Illinois. Conceding that to be true, they are of the opinion that the transaction was not in any fair sense interstate commerce, protected by the Constitution of the United States from State regulation.

The express company in effect engaged in the business of selling through agents in this State at retail, intoxicating liquors, shipped by it for that purpose from the State of Illinois, This was a mere device, as it seems to us, to evade the police laws of this Commonwealth; and that the doctrine of "original packages," or of freedom of interstate commerce, does not apply to a business of this character.

In assuming to collect the purchase price, and to hold possession until the price was paid, it was in no proper sense engaged in interstate commerce. Others of the court are of a contrary opinion; they think the collection of the purchase price was a mere incident to the transportation of the goods, and that the case should be ruled by Rhodes *vs.* Iowa, *supra*, in the event we are constrained to overrule the express company case in 70 Iowa. None of us, as be-

fore observed, are disposed to question that decision at this time, and it follows that the judgment of the district court should be and is, reversed.

51 In the Supreme Court of Iowa, October Term, 1902.

Now on this 30th, day of October 1902 the following among other proceedings were had towit:

STATE OF IOWA, Appellant,
vs.
AMERICAN EXPRESS Co., R. M. COFFIN, and CERTAIN Intoxicating Liquors. } #21661.

Appeal from Tama district court.

In this cause the court being fully advised in the premises, file their written opinion reversing the judgment of the dist. court.

It is therefore considered by the court that the judgment of the court below be and it is hereby reversed and the cause is remanded for further proceedings (if any be required) in the dist. court in harmony with the opinion of this court and that a writ of *procedendo* issue accordingly.

It is further considered by the court that the appellee pay the costs of this appeal, taxed at $55.75 and that execution issue therefor.

52 STATE OF IOWA, *ss:*

I, Jno. C. Crockett, clerk of the supreme court of the State of Iowa, do hereby certify that the above and foregoing is a true, correct and complete transcript of the record, and opinion of said supreme court and the judgment entry in the case of The State of Iowa *vs.* The American Express Company, R. M. Coffin and Certain Intoxicating Liquors, as the same was submitted to said court and opinion handed down and filed on the 30th day of October 1902, as full and complete as the same now appears and remains of record on file in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court at Des Moines, Iowa this 25th day of April A. D. 1903.

[Seal of the Supreme Court of Iowa.]

JNO. C. CROCKETT,
Clerk of the Supreme Court.

STATE OF IOWA, *ss:*

I, Charles A. Bishop, chief justice of the supreme court of the State of Iowa, hereby certify that the foregoing signature is genuine and

that the said Jno. C. Crockett is the duly elected and qualified clerk of the supreme court of the State of Iowa and the custodian of the books and records pertaining to said court. Done at Des Moines Iowa this 25th day of April A. D. 1903.

[Seal of the Supreme Court of Iowa.]

CHARLES A. BISHOP,
Chief Justice of the Supreme Court of Iowa.

53

EXHIBIT "G."

The Supreme Court of the United States.

THE AMERICAN EXPRESS COMPANY and J. M. Coffin and Certain Intoxicating Liquors, Plaintiffs in Error, *against* THE STATE OF IOWA, Defendant in Error.	Error to the Supreme Court of the State of Iowa.

Assignment of Errors.

And now come the plaintiffs in error herein and file the following assignment of errors upon which they will rely in the Supreme Court of the United States in the above entitled case.

There is manifest error in the record and proceedings in said case and in the decision of the supreme court of Iowa, as follows:

I.

The supreme court of Iowa erred in that it refused to find that sections 2413, 2414, 2415 and 2416 of the Code of Iowa of 1897 and the seizure of the four packages containing intoxicating liquors and the proceedings against the same under the said sections of the Code of Iowa, were and are repugnant to the eighth section of article I of the Constitution of the United States, in respect of the power to regulate commerce among the several States.

54

II.

The supreme court of Iowa erred in that it refused to find that the four packages seized and condemned, were not subject to seizure and confiscation under sections 2413, 2414, 2415 and 2416, of the Code of Iowa of 1897, for the reason that said four packages were delivered to the American Express Company, as a carrier, at Rock Island in the State of Illinois, to be transported by said company from Rock Island in the State of Illinois to Tama in the State of Iowa, and there delivered to consignees named, and were, at the time of such seizure, still in the possession of the American Express

Company at its local office at Tama, Iowa, in the original packages in which the same were shipped from the State of Illinois, awaiting delivery to the consignees.

III.

The supreme court of the State of Iowa erred in that it refused to find that the four packages containing intoxicating liquors, which were seized and condemned, were exempt from such seizure and confiscation under the eighth section of article I of the Constitution of the United States, for the reason that said four packages were delivered to the American Express Company, as a carrier, at Rock Island in the State of Illinois, to be transported by said company from Rock Island in the State of Illinois to Tama in the State of Iowa, and there delivered to consignees named, and were, at the time of such seizure, still in the possession of the American Express Company, at its local office at Tama, Iowa, in the original packages in which the same were shipped from the State of Illinois, awaiting delivery to the consignees.

55

IV.

The supreme court of Iowa erred in holding that the four packages containing intoxicating liquors, which were seized and condemned, were kept by the American Express Company to be sold, and were therefore, subject to seizure and confiscation under sections 2413, 2414, 2415 and 2416 of the Code of Iowa of 1897, for the reason that said four packages were held by the American Express Company, as a carrier only, the same having been received by said company at Rock Island in the State of Illinois, to be transported by said company from Rock Island, in the State of Illinois, to Tama, in the State of Iowa, and there delivered to consignees named, upon the payment by them to the said company of the sum of three dollars upon each of said packages in addition to the charges for the transportation thereof and that said four packages, at the time of such seizure, were still in the possession of the American Express Company as such carrier, at its local office at Tama, Iowa, awaiting delivery to the consignees.

V.

The supreme court of Iowa erred in holding that, at the time the said four packages were seized, the American Express Company was not acting as a carrier simply, but was undertaking the performance of an act prohibited by law.

VI.

The supreme court of Iowa erred in holding that, in receiving the said four packages so to be transported, the American Express

Company was an agent of the consignors with authority to
56 transfer the title to the said four packages upon payment of the purchase price.

VII.

The supreme court of Iowa erred in holding that, under the circumstances of said case, the American Express Company held the said four packages for sale within the said State of Iowa, or that a delivery thereof, within said State of Iowa, by the American Express Company, upon receipt of the said sums, in accordance with the terms of the said shipment, would have been a sale within said State of Iowa, it being conceded that the American Express Company and its agents had no knowledge that the said four packages contained intoxicating liquors.

VIII.

The supreme court of Iowa erred in holding that the absence of knowledge on the part of the American Express Company and its agents that the said four packages contained intoxicating liquors was immaterial, upon the question of the liability of the said company, to the judgment rendered.

IX.

The supreme court of Iowa erred in not holding that the seizure of the four packages containing intoxicating liquors and the proceeding against the same under sections 2413, 2414, 2415 and 2416, of the Code of Iowa of 1897, were in violation of the rights of the American Express Company under the eighth section of
57 article I of the Constitution of the United States, in respect of the power to regulate commerce among the several States.

X.

The supreme court of Iowa erred in holding that no Federal question was involved in this case.

XI.

The supreme court of Iowa erred in not ordering the said four packages containing intoxicating liquors, which were seized and condemned, to be returned to the American Express Company and R. M. Coffin.

XII.

The supreme court of Iowa erred in not rendering judgment against the State of Iowa for the cost of the proceeding prosecuted against the four packages seized and condemned.

XIII.

The supreme court of Iowa erred in ordering judgment in favor of the State of Iowa and against the American Express Company and R. M. Coffin.

J. W. WILLETT,
Attorney for Plaintiffs in Error.

58 [Endorsed:] In the supreme court of Iowa The State of Iowa, appellant, against The American Express Company and R. M. Coffin, appellees Petition for writ of error. J. W. Willett attorney for appellees Filed Jun- 10 1903 Jno. C. Crockett clerk supreme court.

59 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the supreme court of the State of Iowa, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The State of Iowa, appellant, and The American Express Company, R. M. Coffin, and Certain Intoxicating Liquors, appellees, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the
60 Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said The American Express Company and R. M. Coffin as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30

days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 29th day of May, in the year of our Lord one thousand nine hundred and three.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] Filed Jun- 10, 1903. Jno. C. Crockett, clerk supreme court.

61 UNITED STATES OF AMERICA, *ss:*

To the State of Iowa, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Iowa, wherein The American Express Company and R. M. Coffin are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable David J. Brewer, associate justice of the Supreme Court of the United States, this 29th day of May, in the year of our Lord one thousand nine hundred and three.

DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

62 On this 10th day of June, in the year of our Lord one thousand nine hundred and three, personally appeared before me, the subscriber, James W. Willett, and makes oath that he delivered a true copy of the within citation to Charles W. Mullan, attorney general of the State of Iowa, attorney for the defendant in error, The State of Iowa, and Jno. C. Crockett, clerk of the supreme court of Iowa.

JAMES W. WILLETT.

Sworn to and subscribed the 10th day of June, A. D. 1903.

[Notarial Seal of Rufus H. Harvey, Iowa.]

RUFUS H. HARVEY,
Notary Public.

Service of the within and foregoing citation is hereby accepted by the undersigned at Des Moines Iowa this 10th. day of June A. D. 1903 and copy thereof received.

CHAS. W. MULLAN,
Attorney General of the State of Iowa,
Attorney for Defendant in Error.
JNO. C. CROCKETT,
Clerk Supreme Court of Iowa.
ALBERT B. CUMMINS,
Governor of the State of Iowa.

[Endorsed:] Filed Jun- 10 1903. Jno. C. Crockett, clerk supreme court.

63 In the Supreme Court of Iowa.

THE AMERICAN EXPRESS COMPANY and R. M. Coffin and Certain Intoxicating Liquors, Plaintiffs in Error,
against
THE STATE OF IOWA, Defendant in Error.
} Return of Clerk on Writ of Error.

THE UNITED STATES OF AMERICA, *State of Iowa,* } ss:

I, Jno. C. Crockett, clerk of the supreme court of Iowa, in pursuance of the command of the writ of error in the above entitled cause to which this certificate is attached, do hereby certify and return that the above and foregoing is a true and correct transcript of the record, opinion, and final judgment of this court, in the case of The American Express Company, and R. M. Coffin, and Certain Intoxicating Liquors plaintiffs in error, against The State of Iowa defendant in error, as full true and complete as the same are now of record, and on file in my office.

I further certify that the assignment of errors, bond, petition for allowance of writ of error, and citation with return of service and acceptance thereon, are hereto attached in original form, true and correct copies of same being retained on file in this office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court this 10th day of June A. D. 1903.

[Seal of the Supreme Court of Iowa.]

JNO. C. CROCKETT,
Clerk Supreme Court of Iowa.

Endorsed on cover: File No. 18,985. Iowa supreme court. Term No. 67. The American Express Company & R. M. Coffin, plaintiffs in error, *vs.* The State of Iowa. Filed June 26", 1903.

IN THE

Supreme Court of the United States.

THE AMERICAN EXPRESS COMPANY
and R. M. COFFIN,
Plaintiffs in Error,

vs.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

BRIEF ON BEHALF OF PLAINTIFFS IN ERROR.

Statement.

This is a writ of error to the Supreme Court of Iowa.

The case arises under certain laws of Iowa providing for the seizure and destruction of intoxicating liquors "owned or kept for the purpose of being sold."

(See Appendix to this brief.)

Pursuant to these provisions of the Iowa law, an information was filed, March 31st, 1900, before a Justice of the Peace in Tama Township, Iowa, charging the

plaintiffs in error with keeping intoxicating liquors in the County with intent to sell the same in violation of law (Record, p. 22). Thereupon the Justice issued a warrant to a constable, directing a search of the premises described in the information, and a seizure of the packages mentioned therein.

On the second of April the constable returned the warrant, showing that, pursuant thereto, he had searched the premises and seized four packages of liquor in the office of the American Express Company in Tama, and that he held the liquors subject to the further order of the Court (Record, p. 23).

The plaintiffs in error, the American Express Company and Coffin, its local agent at Tama, the persons against whom the proceeding was instituted, were duly summoned to appear before the Justice, and the cause came on for hearing upon the information, the defendants' answer (Record, p. 23) and a stipulation as to facts (Record, p. 25).

The answer set up in substance (Record, p. 24) that the packages were received by the express company on the 29th of March, from consignors at Rock Island, Illinois, for interstate transportation from Rock Island to Tama, Iowa, consigned to several parties, being what are known as C. O. D. shipments; that at the time of the seizure they were in the possession of the express company and its agent as carriers, and had not yet been delivered to the consignees, and that the express company and its agent had no knowledge of the contents of the packages.

By the stipulation as to facts it appeared that the packages were shipped by the consignors in Illinois consigned to consignees in Tama, Iowa, upon their orders given to the traveling agent of the consignors at Tama, Iowa, and by him sent in to the consignors subject to their approval and shipment thereunder; that they were consigned as C. O. D. shipments for delivery to the consignees at the office of the American Express Company in Tama; that the four packages in question did, as a matter of fact, contain in-

toxicating liquors, but neither the Express Company nor any of its agents or employees had any knowledge of their contents until after the seizure, and that at the time of the seizure the liquors were contained in the original packages in which they had been delivered to the Express Company in Illinois, and that they were seized before delivery to the consignees (Record, p. 26).

Thereupon the Justice rendered judgment that the packages were kept by the Express Company and its agent "for the purpose of being sold in violation of law," and judgment was rendered that they be forfeited (Record, p. 27).

From this judgment the plaintiffs in error appealed to the District Court of Tama County, and upon the appeal filed an amendment to their answer, which was probably unnecessary, but the purpose of which was to make more distinctly their claim to immunity under the Interstate Commerce clause of the Constitution (Record, p. 27). The cause was heard in the District Court upon the same record that was before the Justice, with the addition of the amendment to the answer, and resulted in a finding that the liquors were wrongfully seized, and that they be returned to the express company. Thereupon an appeal was taken by the State to the Supreme Court of Iowa, assigning for error that the District Court "erred in holding that "the liquors seized were exempt from seizure under "the Interstate Commerce provision of the Federal "Constitution" (Record, p. 28).

The opinion of the Supreme Court of Iowa, found at page 29 of the Record, led to a reversal of the judgment of the District Court. From this judgment of the Supreme Court the present writ of error was taken.

Assignment of Errors.

The assignments of error in this Court are found at page 33 of the Record. They raise in various forms

the objection that at the time of the seizure the merchandise was in the possession of the express company as a carrier engaged in interstate transportation; that it was in transit upon the journey into the State and had not been delivered to the consignees, and that the act of interstate transportation was still incomplete; that it was not held by the carrier for sale; that no sale of it in the State of Iowa was contemplated and that the liquors were exempt from seizure or interference or control by the State by reason of the Interstate Commerce clause of the Constitution.

First Point.

Decisions of this Court have reduced within very narrow limits the questions raised by the present record.

The following propositions, which are stated in the language of the Court, must be deemed to be firmly established:

1. That "ardent spirits, distilled liquors, ale "and beer are subjects of exchange, barter and "traffic, like any other commodity in which a "right of traffic exists, and are so recognized by "the usages of the commercial world, the laws of "Congress and the decisions of the courts."

Leisy vs. Hardin, 135 U. S., 100–110.

2. That "the transportation of merchandise "from one State into and across another is inter-"state commerce, and is protected from the opera-"tion of State laws from the moment of shipment, "whilst in transit, and up to the ending of the "journey by the delivery of the goods to the con-

" signee at the place to which they were con-
" signed."

Bowman vs. Chicago & Northwestern Ry. Co., 125 U. S., 465
Rhodes vs. Iowa, 170 U. S., 412, 415.

3. That " the power to ship merchandise from " one State into another carries with it, as an inci-
" dent, the right in the receiver of the goods to " sell them in the original packages, any State " regulation to the contrary notwithstanding; " that is to say, that the goods received by Inter-
" state Commerce remain under the shelter of the " Interstate Commerce clause of the Constitution " until by a sale in the original package they have " been commingled with the general mass of prop-
" erty in the State."

Leisy vs. Hardin, 135 U. S., 100.
Vance vs. W. A. Vandercook Co., 170 U. S., 438, 444.

4. That the last preceding " proposition, whilst " generically true, is no longer applicable to intox-
" icating liquors, since Congress, in the exercise " of its lawful authority," by the passage of the Act of August 8, 1890, " has recognized the power " of the several States to control the incidental " right of sale in the original packages of intoxi-
" cating liquors shipped into one State from an-
" other, so as to enable the States to prevent the " exercise by the receiver of the accessory right of " selling intoxicating liquors in original packages " except in conformity to lawful State regula-
" tions."

In re Rahrer, 140 U. S., 545.
Rhodes vs. Iowa, 170 U. S., 412.
Vance vs. W. A. Vandercook, 170 U. S., 438, 445.

5. That the above-mentioned Act of Congress, which provides that intoxicating liquors " trans-
" ported into any State or Territory, or remaining

" therein for use, consumption, sale or storage
" therein, shall, upon arrival in such State or Ter-
" ritory, be subject to the operation and effect of
" the laws of such State or Territory, enacted in
" the exercise of its police powers, to the same
" extent and in the same manner as though such
" * * * liquors had been produced in such
" State or Territory, and shall not be exempt
" therefrom by reason of being introduced
" therein in original packages or otherwise,
" did not intend to, and did not cause
" the power of the State to attach to
" an interstate commerce shipment, whilst the
" merchandise was in transit under such ship-
" ment, and until its arrival at the point of desti-
" nation and delivery there to the consignee."

Rhodes vs. Iowa, 170 U. S., 412, 426.

6. That " the power to ship from one State into
" another embraces of necessity the right to have
" the goods carried to the place of destination,
" and be delivered at that point to the consignee,"
and that the fundamental right which these de-
cisions hold to be protected from the operation
of State laws by the Constitution, is " the continu-
" ity of shipment of goods coming from one State
" into another from the point of transmission to
" the point of consignment, and the accomplish-
" ment there of the delivery covered by the con-
" tract." * * * " The power which it was
" held in the *Bowman case* the State did not pos-
" sess was that of stopping interstate shipments
" at the State line by breaking their continuity
" and intercepting their course from the point of
" origin to the point of consummation."

Rhodes vs. Iowa, 170 U. S., 412-419.

Second Point.

It cannot be denied that the effect of the propositions thus established, is to exempt from State regulation or interference, a shipment of liquors imported into a State, until the contract of shipment or the act of interstate transportation is fully performed and consummated by delivery to the consignee. Such delivery marks the first point of time at which the goods become subjected to State control, as being commingled in the general mass of property within the State, and then only is there a subject upon which the police power of the State can operate.

The seizure of the liquors in the present case took place before that time and while the goods were still in the possession of the interstate carrier engaged in the act of interstate transportation. They were, therefore, clearly exempt from seizure or interference or regulation by the State under the propositions above stated.

Third Point.

The Supreme Court of Iowa held otherwise. Its opinion rests upon no very well defined ground, probably for the reason, as it would appear, that there was much diversity of opinion among the members of the Court touching the real ground upon which the decision should be placed.

As the packages had been shipped C. O. D. the opinion first considers what the nature and effect of such a shipment is.

A majority of the Court were of the opinion that, under such a shipment, the carrier is the agent of the buyer for purposes of transportation, and of the seller for the purpose of retention of possession and collec-

tion of the purchase price, and that, as a necessary corollary, title passes to the buyer on delivery to the carrier. If this be true, then the sale was consummated when the goods were delivered to the carrier in Illinois, and there was no sale contemplated in Iowa, and hence the carrier having the goods in its possession in Iowa for the purpose of delivering to the buyer under the contract of carriage, could not have been keeping the goods for purposes of sale.

The Court, however, declined to follow its own views upon this point, regarding itself as concluded by a former decision of the Supreme Court of Iowa (70 Iowa, 278), in which it was held, in respect to a C. O. D. shipment of liquors, that while in the possession of the carrier they remained the property of the consignors, and that the carrier was the agent of the consignors with authority to transfer title to the property by delivery upon payment of the purchase price. They admitted (Record, p. 31) that the doctrine of this former Iowa case was opposed to the weight of authority, but they justified themselves in following it by saying:

> " Supported as we are in our position by re-
> " spectable authority, fortified by the thought
> " that we are upholding the policy of this State
> " toward the traffic in intoxicants, and fully be-
> " lieving that the doctrine announced, while, per-
> " haps, not supported by the weight of judicial
> " authority, is one which will do much good and
> " no harm, we are constrained to adhere to it on
> " the broad ground of *stare decisis*, which is one
> " of the safeguards of our judicial system "!

In the view of the Court the reaching of this conclusion presented an additional advantage.

> " This conclusion," they said, " relieves us from
> " the necessity of considering the other question,
> " as to whether or not the goods are protected by
> " reason of the Commerce clause of the Federal
> " Constitution "!

and for this statement they relied upon *O'Neill vs. Vermont*, 144 U. S., 323.

This was, at least, a convenient and easy way of avoiding the making of any decision upon the only point in the case that called for decision—that is the Federal question that was presented under the Interstate Commerce clause of the Constitution.

In an earlier part of the opinion the Court had stated what they supposed the *O'Neill case* to have decided—a supposition which, although quite erroneous, may serve to explain what they meant by saying that they were relieved from the necessity of deciding the Federal question.

The statement was to the effect that the Supreme Court of the United States, in the *O'Neill case*, " held " that the determination of the character of a C. O. D. " transaction did not involve a Federal question, and " not only sustained a condemnation of liquors under " precisely the same state of facts as appear in the " case before us now, but also affirmed a judgment of " conviction against an agent connected with the sale."

A more erroneous statement of what was in fact held in the *O'Neill case* can hardly be imagined. The case arose upon a prosecution, under the laws of Vermont, for selling, furnishing and giving away intoxicating liquors.

The defendant was a dealer in liquors at Whitehall, New York, and was in the habit of receiving at his store orders for liquor from Vermont, accompanied by a jug to contain the liquor, and liquors were sent from Whitehall into Vermont by express under a C. O. D. consignment. The Supreme Court of Vermont held that the completed sale was in Vermont and sustained the conviction. A writ of error taken to the Supreme Court of the United States was dismissed. No point on the Commerce Clause of the Constitution was taken in the County Court or considered by the Supreme Court of Vermont. The case was put by the Supreme Court of the State solely upon its police power.

Speaking of this case, Mr. Justice BROWN, delivering

the opinion of the Court in *Norfolk & Western Railway Company vs. Sims*, 191 U. S., 441–449, said:

> "It will thus be seen that the Supreme Court
> " of Vermont disclaimed the decision of the very
> " question involved in this case as to the power of
> " the States to interfere with interstate commerce
> " by taxation of the thing imported, and the writ
> " of error was dismissed upon the ground that no
> " Federal question was presented for its decision
> " and none was necessary to the determination of
> " the case."

Of course it is true, as an isolated proposition, that the determination of the character of a C. O. D. transaction does not, of itself, necessarily present a Federal question; but this Court, in the *O'Neill case*, neither sustained the condemnation of the goods nor the conviction of the defendant. It simply dismissed the case because the defendant had failed to raise any Federal question by claiming the protection of the Interstate Commerce clause. Mr. Justice FIELD, indeed, thought that the Federal question was sufficiently presented, and entertained no doubt that the action of the State courts was in violation of the Interstate Commerce clause.

It will thus be seen that the position of the Supreme Court of Iowa, that having determined that the sale under the C. O. D. shipment was not completed until delivery to the consignee in Iowa, it was thereupon relieved from the necessity of deciding the Federal question, derives no support from the *O'Neill case*. The very ground of the decision in the latter was that the parties had wholly failed to raise the Federal question, a condition bearing no analogy to that presented by the case at bar, in which the one contention insisted upon throughout by the plaintiffs in error was the immunity claimed under the Interstate Commerce clause of the Federal Constitution.

When it is thus shown what the decision in the

O'Neill case really was the position of the Iowa Supreme Court must amount to this: that because the Supreme Court of the United States had held that a decision of a State Court concerning the effect of a C. O. D. shipment did not present a Federal question in a case where no Federal question was raised, therefore, a like decision can present no Federal question in a case in which a Federal question is most distinctly raised.

A position which surely can require no argument for its complete refutation.

Fourth Point.

Whether the Supreme Court of Iowa was correct in holding, in accordance with its former decision in 70 Iowa, 271, that the technical property in the goods remained in the consignors, and that the express company was their agent with authority to transfer the title to the consignee upon payment of the purchase price, is of little importance.

Confessedly, this conclusion was reached in spite of the conviction of a majority of the Court that it was erroneous. Admittedly, they blindly followed a former precedent of their Court which they conceded to be opposed to the weight of authority.

It *was* opposed by the great weight of authority. While the question is one upon which there has been some conflict of authority, by far the better opinion is that, in such a case, the sale is complete upon a delivery of the goods to the carrier, who becomes the agent of the consignee for the purpose of accepting a delivery and transporting the goods to him, and the agent of the consignor for the purpose of the collection of the purchase price.

Commonwealth vs. Russell, 11 Ky., 576.
State vs. Cairns (Kansas), 68 Pac. Rep., 621.

James vs. Commonwealth, 42 S. W. Rep., 1107.
Commonwealth vs. Fleming, 130 Pa. State, 138.
State v. Flanagan, 38 West Va., 53.
Pilgreen vs. State, 71 Ala., 368.
Higgins vs. Murry, 73 N. Y., 252.

But, as we have said, this question of the technical passing of the title, is of little importance. There can be no doubt that, at the time of the seizure, the carrier in the present case was engaged in an act of interstate commerce transportation, and until that was concluded and consummated the goods were not subject to the police power of the State.

That the technical question of the passing of title is immaterial has been very lately held by this Court. In *Norfolk & Western Railway Company vs. Sims*, 191 U. S., 441, a Chicago corporation had consigned a sewing machine to a customer in North Carolina, upon his order, and under an ordinary C. O. D. consignment. The Supreme Court of North Carolina held that this was a sale by the consignors within the State, because, in their opinion, the title did not pass until the delivery to the consignee, and they sustained a levy upon the machine by the sheriff for the purpose of collecting a license tax held to be due from the consignor, as a person engaged "in the business of selling" in the State. The judgment of the Supreme Court of North Carolina was reversed by this Court, which, speaking by Mr. Justice BROWN, said:

> "While it may be entirely true that the prop-
> "erty in the thing sold does not pass under a
> "C. O. D. consignment until delivery of the
> "goods and payment to the carrier, and hence it
> "may be said that the sale is not completed until
> "then, yet as matter of fact the bargain is made
> "and the contract of sale completed as such, when
> "the order is received in Chicago, and the ma-
> "chine shipped in pursuance thereof."

"A sale really consists of two separate and dis-
"tinct elements; first, a contract of sale, which
"is completed when the offer is made and ac-
"cepted; and, second, a delivery of the property
"which may precede, be accompanied by, or fol-
"low the payment of the price, as may have been
"agreed upon between the parties. The sub-
"stance of the sale is the agreement to sell and
"its acceptance. That possession shall be re-
"tained until payment of the price may or may
"not have been a part of the original bargain, but
"in substance it is a mere method of collection."
" * * *

And in conclusion the learned Justice said:

"Upon the other hand, for the past seventy-five
"years and ever since the original case of *Brown*
"*vs. Maryland*, 12 Wheat., 419, we have uni-
"formly held that States have no power to tax
"directly or by license upon the importer, goods
"imported from foreign countries or other States,
"while in their original packages, or before they
"have become commingled with the general prop-
"erty of the State and lost their instinctive char-
"acter as imports." * * *

"Indeed, the cases upon this subject are almost
"too numerous for citation, and the one under
"consideration is clearly controlled by them. The
"sewing machine was made and sold in another
"State, shipped to North Carolina in its original
"package for delivery to the consignee upon pay-
"ment of its price. It had never become co-
"mingled with the general mass of property within
"the State. While technically the title of the
"machine may not have passed until the price
"was paid, the sale was actually made in Chicago,
"and the fact that the price was to be collected
"in North Carolina is too slender a thread upon
"which to hang an exception of the transaction

" from a rule which would otherwise declare the
" tax to be an interference with interstate com-
" merce."

Fifth Point.

We have said that there was much diversity of opinion in the Iowa Supreme Court touching the real ground upon which the decision should be placed.

Having decided against the real conviction of a majority of its members, to follow the former case in which it was held that the carrier was the agent of the consignor only, and that the sale did not take place until delivery to the consignee in Iowa, and having decided that this conclusion relieved the Court from the necessity of passing upon the Federal question, the Court continues:

" However, some of the members of the Court
" would reach the same result, had it been found
" that the title to the property passed when de-
" livered to the carrier in the State of Illinois.
" Conceding that to be true, they are of the opin-
" ion that the transaction was not in any fair
" sense interstate commerce, protected by the
" Constitution of the United States from State
" regulation."

" The express company, in effect, engaged in
" the business of selling through agents in this
" State at retail, intoxicating liquors, shipped by
" it *for that purpose* from the State of Illinois.
" This was a mere device as it seems to us to
" evade the police laws of this Commonwealth, and
" that the doctrine of ' original packages,' or of
" freedom of interstate commerce, does not apply
" to a business of this character. ' In assuming
" to collect the purchase price, and to hold pos-
" session until the price was paid, it was in no
" proper sense engaged in interstate cammerce.'

" Others of the Court are of a contrary opinion; " they think the collection of the purchase price " was a mere incident to the transportation of the " goods, and that the case should be ruled by " Rhodes vs. Iowa, *supra*, in the event we are con- " strained to overrule the express company case " in 70 Iowa " (Record, p. 31).

1. The opinion does not state why some of the members of the Court thought that the transaction was not in any fair sense interstate commerce.

The " transaction " referred to was the transportation by a carrier from one State into another of a particular kind of merchandise which this Court has said is—

" the subject of exchange, barter and traffic, like " any other commodity in which a right of traffic " exists, and is so recognized by the usages of the " commercial world, the laws of Congress and the " decisions of the Courts."

If such a transaction be not intestate commerce, protected by the Federal Constitution from State regulation, then no transaction can come within the definition of those words.

2. The next suggestion in the portion of the opinion last quoted, is that " the express company in effect engaged in the business of selling, through agents in this State, intoxicating liquors shipped by it for that purpose from the State of Illinois," and that " this was a mere device, as it seems to us, to evade the police laws of this Commonwealth."

Surely, in view of the conceded facts, this is an extraordinary construction to put upon the transaction.

The merchandise was not shipped by the express company, but by the consignors (Record, p. 26, see § 7 of Stipulation as to Facts).

It was received by the express company for transportation in the regular course of its business as an intestate carrier, and " neither the company nor its

agents or employees knew or had any knowledge that the packages contained intoxicating liquors (Record, p. 26, see § 4 of Stipulation). In fact, the express company and its agents knew nothing of the contents of the packages until after the seizure *(Ib.)*.

The admitted facts are that the express company acted in entire good faith, accepting and forwarding the shipment in the ordinary course of business, without the slightest knowledge or suspicion that it contained intoxicating liquors. And yet this is characterized by the Supreme Court of Iowa as the engaging by the company in the business of selling intoxicating liquors at retail in the State, and as a device to evade its prohibition laws.

Does not the entire record show that there is not the slightest justification of such a charge?

3. But if this were otherwise, and it had been shown that the carrier had knowledge of the contents of the shipment, it would be quite immaterial.

What is or is not a subject of interstate commerce cannot be determined by the State of Iowa. If this were not true, the State could wholly exclude interstate shipments of liquors.

The police powers of the State can have no operation upon that which is the subject of interstate commerce. The constitutional privilege protects the transaction from any exercise of those powers, so long as it retains its interstate character.

It would not aid the State to denounce it as a *device*, nor would it help her cause in any degree to show that it was in fact a device to evade her police laws. If it be such and is yet protected by the constitutional immunity of interstate commerce, the device is lawful by virtue of a higher power than any the State can exercise.

4. It is next said that the carrier

> " in assuming to collect the purchase price and to
> " hold possession until the price was paid, was in
> " no proper sense engaged in interstate com-
> " merce."

Why not? Are not those acts commercial acts? Are they not a part of commerce? The Court seems to have entertained a notion that nothing but a naked sale, or nothing but naked transportation can constitute commerce. What warrant is there for such a notion? The constitutional immunity extends to whatever goes to make up commerce, whether it be a principal or merely an incidental factor. The entire transaction is privileged with all its incidents and all its details.

In undertaking, in connection with an interstate shipment, to collect the price, the carrier is as truly engaged in interstate commerce as he is in performing the act of transportation itself.

5. Some of the Court were of opinion that the collection of the purchase price was a mere incident to the transportation of the goods, and that therefore the case should be governed by *Rhodes vs. Iowa*, in the event that they should feel constrained to overrule the case in 70 Iowa.

If the collection of the price was a mere incident of the transportation, then they were bound to follow *Rhodes vs. Iowa*, irrespective of what was decided in 70 Iowa. That case did not hold that the collection of the price was not an incident to the transportation, but that the sale was not completed until delivery to the consignee.

As we have above shown, it is quite immaterial whether the title technically passed on delivery to the carrier or on delivery to the consignee. In either case if, as these Judges held, the collection was merely incidental to the transportation, the transaction was interstate commerce and exempt from State control.

Last Point. The judgment of the Supreme Court of Iowa should be reversed with costs.

LEWIS CASS LEDYARD,
Of Counsel for Plaintiffs-in-Error.

APPENDIX.

CODE SEC. 2413. SEARCH WARRANT—SEIZURE. If any credible resident of any county shall, before a justice of the peace for the same county, make written information, supported by his oath or affirmation that he has reason to believe, and does believe, that any intoxicating liquor, described as particularly as may be in said information, owned or kept by any person named or described in said information as particularly as may be, and is intended by him to be sold in violation of the provisions of this chapter, said justice shall, upon finding probable cause for such information, issue his warrant of search, directed to any peace officer in the county, describing as particularly as may be the liquor and the place described in said information as the owner or keeper of said liquor, and commanding the said officer to search thoroughly said place, and to seize the said liquor with the vessels containing it, and to keep the same securely until final action be had thereon; whereupon the said peace officer to whom such warrant shall be delivered shall forthwith obey and execute, as effectually as possible, the commands of said warrant, and make return of his doings to said justice, and shall securely keep all liquors so seized by him and the vessels containing them until final action be had thereon. If the place to be searched be a dwelling house in which any family resides, and in which no tavern, eating house, grocery or other place of public resort is kept, such warrant shall not be issued unless said complaint shall, on oath or affirmation, declare before said justice that he has reason to believe and does believe that within one month next before making of said information intoxicating liquor has been in violation of this chapter, sold in said house, or in some dependency thereof, by the person accused in said information, or

by his consent or permission ; nor unless from the facts and circumstances disclosed by such complaint, the said justice shall be of the opinion that said complaint has adequate reason for such belief.

CODE SEC. 2414. INFORMATION FOR SEARCH WARRANT—DEFECTS. The information and search warrant in such case shall describe, with reasonable particularity, the place to be searched, as well as the liquors to be seized. When any liquors shall have been seized by virtue of any such warrant, the same shall not be discharged or returned to any person claiming the same by reason of any alleged insufficiency of description in the warrant of the liquor or place, but the claimant shall only have a right to be heard on the merits of the case.

CODE SEC. 2415. NOTICE—TRIAL—JUDGMENT—APPEAL. In the event of a seizure under said warrant, the officer shall forthwith make a return of his acts thereunder, and within forty-eight hours thereafter the justice who issued the warrant shall cause to be left at the place where said liquor was seized, if said place be a dwelling house, store or shop, posted in some conspicuous place on or about said buildings, and also to be left with or at the last known and usual place of residence of the person named or described in said information as the owner or keeper of said liquor, if he be a resident of this state, a notice, summoning such person, and all others whom it may concern, to appear before said justice at a place and time named in said notice, which time shall not be less than five nor more than fifteen days after the posting and leaving of said notices, and show cause, if any they have, why said liquor, together with the vessels in which the same is contained, should not be forfeited ; and said notice shall, with reasonable certainty, describe said liquor and vessels, and shall state where, when and why the same were seized. At the time and place prescribed in said notice, the person named in said information, or any other person claiming an interest in said liquor and vessels, or any part thereof, may ap-

pear and show cause why the same should not be forfeited. If any person shall so appear, he shall become a party defendant in said cause, and said justice shall make a record thereof. Whether any person shall so appear or not, said justice shall, at the prescribed time, proceed to the trial of said case, and said complainants or either of them may, and upon their default the officer having such liquor in custody shall, appear before said justice and prosecute said information, and show cause why such liquor should be adjudged forfeited.

The proceeding in the trial of such case may be the same, substantially, as in cases of misdemeanor triable before justices of the peace, and if any person shall appear and be made a party defendant as herein provided, and shall make written plea that said liquor or a part thereof claimed by him, was not owned or kept with intent to be sold in violation of this chapter, such party defendant may, at his option, demand a jury to try the issue, and if, upon the evidence presented, the said justice or jury, as the case may be, shall by verdict, find that said liquor was, when seized owned or kept by any person, whether said party defendant or not, for the purpose of being sold in violation of this chapter, the said justice shall render judgment that said liquor, or said part thereof, with the vessels in which it is contained, is forfeited. If no person be made defendant in manner aforesaid, or if judgment be in favor of all the defendants who appear and are made such, then the costs of the proceeding shall be paid as in ordinary criminal prosecutions where the prosecution fails. If the judgment shall be against only one party defendant appearing as aforesaid, he shall be adjudged to pay all the costs of proceedings in the seizure and detention of the liquor claimed by him, and trial, up to the time of judgment. But if such judgment shall be against more than one party defendant claiming distinct interests in said liquor, then the costs of said proceedings and trial shall be, according to the discretion of said justice, equitably apportioned among said defendants, and execution shall be issued on said judgments

against said defendants, for the amount of the costs so adjudged against them. Any person appearing and becoming party defendant as aforesaid may appeal from said judgment of forfeiture, as to the whole or any part of said liquor and vessels claimed by him and so adjudged forfeited, to the district court, as in ordinary cases of misdemeanor.

CODE SEC. 2416. DESTRUCTION OF LIQUOR AND VESSELS. Whenever it shall be finally decided that liquor seized as aforesaid is forfeited, the Court rendering final judgment of forfeiture shall issue to the officer having said liquors in custody, or to some other peace officer, a written order, directing him forthwith to destroy said liquor and vessels containing the same, and immediately thereafter to make return of said order to the court whence issued, with his doings indorsed thereon. Whenever it shall be finally decided that any liquor so seized is not liable to forfeiture, the court by whom such final decision shall be rendered shall issue a written order to the officer having the same in custody, or to some other peace officer, to restore said liquors with the vessels containing the same, to the place where it was seized, as nearly as may be, or to the person entitled to receive it, which order the officer shall obey, and make return thereon to the court of his acts thereunder, and the costs of the proceeding in such case attending the restoration, as also the costs attending the destruction of such liquor in case of forfeiture, shall be taxed and paid in the same manner as is provided in case of ordinary criminal prosecutions where the prosecution fails.

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JAMES H. McKENNEY,
Clerk.

MOTION TO DISMISS WRIT OF ERROR.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

Term Number 67.

THE AMERICAN EXPRESS CO. AND
R. M. COFFIN, PLAINTIFFS IN ERROR,

vs.

THE STATE OF IOWA, DEFENDANT IN ERROR.

ERROR TO THE SUPREME COURT OF IOWA.

(18,985.)



IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

Term Number 67.

THE AMERICAN EXPRESS CO. AND
R. M. COFFIN, PLAINTIFFS IN ERROR,

vs.

THE STATE OF IOWA, DEFENDANT IN ERROR.

ERROR TO THE SUPREME COURT OF IOWA.

To MAXWELL & RAMSEY, and to WILLETT & HUBER, Attorneys for Plaintiffs in Error.

Sirs: You will each please take notice that the state of Iowa, defendant in error herein, will, upon the tenth day of October, 1904, or as soon thereafter as counsel can be heard, move the supreme court of the United States at its court room in the city of Washington, District of Columbia, to dismiss the writ of error to the supreme court of Iowa, heretofore and on or about the 29th day of May, 1903, sued out of the supreme court of the United States by the plain-

tiffs in error to the supreme court of the state of Iowa, and for such other and further relief as to the court may seem just.

You will further please take notice that said motion will be based upon the ground that the supreme court of the United States has no jurisdiction of this cause for the reason:

That this cause does not involve a federal question; that is to say, there has not been drawn into question in this cause the validity of any treaty or statute of, or any authority exercised under, the United States, the decision whereon has been against the validity thereof; nor has there been drawn into question in this cause the validity of any statute of, or any authority exercised under, any state on the ground that such statute is repugnant to the constitution, treaties or laws of the United States, the decision whereon has been in favor of the validity thereof; nor has any claim been made in this cause of or to any title, right, privilege or immunity under the constitution, or any treaty or statute of, or commission held, or authority exercised, under the United States, the decision whereon was against the title, right, privilege or immunity so set up or claimed.

You will also further please take notice that said motion will be made upon all the records, files and papers of said cause above entitled on file in the supreme court of the United States, which will be referred to in support thereof.

CHARLES W. MULLAN,
Attorney General of Iowa.
Attorney for Defendant in Error.

Service of the foregoing notice of motion to dismiss writ of error in the above entitled cause is hereby acknowledged this.....day of October, 1904.

.....

Attorneys for Plaintiffs in Error.

MOTION TO DISMISS WRIT OF ERROR.

The American Express Company and R. M. Coffin,
Plaintiffs in Error.

v.

The State of Iowa,
Defendant in Error.

Comes now the state of Iowa, defendant in error herein, by Charles W. Mullan, its attorney general, and moves the court to dismiss the writ of error issued herein on or about the 29th day of May, 1903, and to grant such other and further relief as to the court may seem just herein, and as grounds of said motion respectfully shows to this court:

That this cause does not involve a federal question; that is to say, there has not been drawn into question in this cause the validity of any treaty or statute of, or any authority exercised under, the United States, decision whereon has been against the validity thereof; nor has there been drawn into question in this cause the validity or any statute of, or any authority exercised under, any state on the ground that such statute is repugnant to the constitution, treaties or laws of the United States, the decision whereon has been in favor of the validity thereof; nor has any claim been made in this cause of or to any title, right, privilege or immunity under the constitution, or any treaty or statute of, or commission held, or authority exercised under, the United States, the decision whereon was against the title, right, privilege or immunity so set up or claimed.

STATEMENT OF THE CASE.

To enable the court to determine the motion to dismiss the writ of error herein, a concise statement of the facts in the case will be set forth:

Certain packages of intoxicating liquors, each containing one quart, were, in pursuance of orders received by John Collum & Company, dealers in intoxicating liquors at Rock Island, Illinois, delivered to the American Express Company, plaintiff in error, at Rock Island, to be transported by that company to the city of Tama, in the state of Iowa, and there to be delivered to the consignees named, upon the payment of $3 and express charges on each package so shipped.

The plaintiff in error had no knowledge that such packages contained intoxicating liquors, and transported them to Tama in the state of Iowa, where they were seized in the possession of its agent, R. M. Coffin, plaintiff in error. The liquors so seized were, by the judgment of a justice of the peace, condemned to be destroyed on the ground that they were kept by plaintiffs in error to be sold in violation of the law of the state of Iowa.

Upon appeal to the district court of Iowa by the plaintiffs in error, the liquors were ordered to be returned to the express company, upon the ground that such liquors were wrongfully seized, and from the judgment of the district court the state appealed to the supreme court of Iowa.

At the October term, 1902, the supreme court of Iowa reversed the judgment of the district court, and held that the liquors in question had been rightfully seized.

The following is an agreed statement of facts stipulated by the attorneys appearing for the respective parties in the district court:

"It is hereby stipulated by the parties to the above entitled cause:

1st. That the defendant, the American Express Company, is a foreign corporation as alleged in defendants' answer.

2d. That said defendant express company has not nor has it at any time had or held a permit or other authority to sell intoxicating liquors in Tama county, Iowa.

3d. That the defendant, R. M. Coffin, is a registered pharmacist and holds a permit to sell intoxicating liquors for the purposes authorized by the laws of Iowa, but that he makes no claim that such permit authorizes any delivery of intoxicating liquors by him as agent of said express company which may be received by him as the agent of his company, and consigned to parties who may call for the same at the office of said company, nor is the delivery of such liquors by him for the said express company in any wise conducted under the regulations and laws prescribed by the state of Iowa for the sale of intoxicating liquors by him as a registered pharmacist and permit holder.

4th. That at the time the packages described in defendants' answer, which are the same packages seized under the warrant of seizure in this cause, were received for transportation by said express company, neither the defendant company nor its agents or employes knew or had any knowledge

that the said packages contained intoxicating liquors, nor did said express company, its employes or either of the other defendants, Coffin and Crossman, know or have any knowledge of the actual contents of said packages seized herein until after the seizure thereof.

5th. It is conceded that said packages and each of them do contain intoxicating liquors of not less than one quart each, and that such liquors are in the original packages in which they were delivered to the defendant express company as a common carrier in the state of Illinois for transportation to Tama, Iowa.

6th. That the charge of three dollars on each package, mentioned in defendants' answer, is no part of the charges for transportation and no part of the compensation of said defendant express company for transporting the same, and that the said sum of three dollars is the purchase price of the goods contained in each package respectively, and that said express company is bound under its contract to collect for the shipper of said packages the said sum of three dollars on each package before delivering the same to the consignee and to transmit to said shipper the sum of three dollars on each package.

7th. That the place of delivery of said packages to consignees is at the office of the said American Express Company in Tama, Tama county, Iowa, of which office the defendant, R. M. Coffin, is in charge as agent, and at the time of the seizure herein none of said packages had been delivered to the consignees or either of them. That said packages and each of them were shipped by consignors to consignees on their orders, given to the traveling agent of

consignors at Tama, Iowa, and by him sent in to consignors subject to their approval and shipment thereunder.

8th. That in case the hearing of this cause should be on demurrer of plaintiff to defendant's answer, each of the above admitted facts shall be considered in connection with the answer as fully and have the same effect in law as if alleged in said answer or made a part thereof.

C. B. BRADSHAW,
Attorney for Plaintiffs.

WILLETT & HUBER,
Attorneys for Defendant.

BRIEF UPON MOTION TO DISMISS WRIT OF ERROR.

Section 709 of the revised statutes of the United States provides:

"A final judgment or decree in any suit in the highest court of a state, in which a decision in the suit could be had, where is drawn in question the validity of a treaty, or statute of, or an authority exercised under, the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any state, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision is in favor of their validity; or where any title, right, privilege, or immunity is claimed under the constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, and the decision is against the title, right, privilege, or immunity specially set up or claimed, by either party, under such constitution, treaty, statute, commission, or authority, may be re-examined and reversed or affirmed in the supreme court upon a writ of error. The writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in a court of the United States; (and the proceeding upon the reversal shall be the same, except that the supreme court may, at their discretion, proceed to a final decision of the case, and award execution, or remand the same to the court from which it was so removed).

"The supreme court may (reaffirm) reverse, modify, or affirm the judgment or decree of such state court, and may, at their discretion, award execution, or remand the same to the court from which it was removed by the writ."

The claim made by the plaintiffs in error is that the supreme court of Iowa erred in not holding that sections 2413, 2414, 2415 and 2416 of the code of Iowa, and the seizure of the packages containing intoxicating liquors, and the proceedings against the same under the sections of the code referred to, were repugnant to section 8 of article 1 of the constitution of the United States, and that by reason of the holding on the part of the supreme court of Iowa, a federal question is involved which gives this court jurisdiction to hear and determine this cause; and the soundness or unsoundness of the claim made by plaintiffs in error determines the jurisdiction of this court.

The question here presented is: Does the decision of the supreme court of Iowa deny the authority of congress to regulate commerce among the several states?

The contention of the defendant in error is that the decision of the Iowa court is not in contravention of the authority of congress to regulate interstate commerce, and on the contrary is a decision wherein the state simply exercises its police powers in regulating the traffic and sale of intoxicating liquors within the state. The regulation of the sale and use of intoxicating liquors has always been recognized as a subject peculiarly appertaining to the police powers of the several states:

License Cases, 5 How., 504;
Bartemeyer v. Iowa, 18 Wall., 129;
Beer Co. v. Massachusetts, 97 U. S., 25;
Foster v. Kansas, 112 U. S., 201;
Mugler v. Kansas, 123 U. S., 623;
Kidd v. Pearson, 128 U. S., 1;
Eilenbecker v. Plymouth County, 134 U. S., 31.

On the 8th day of August, 1890, congress enacted a law which provided:

"All fermented, distilled or other intoxicating liquors or liquid, transported into any state or territory, or remaining therein for use, consumption, sale or storage therein, shall, upon arrival in such state or territory, be subject to the operation and effect of the laws of such state or territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such state or territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise."

In construing the provisions of this act of congress, this court, in *Rhodes v. Iowa*, 170 U. S., 412, held that packages of intoxicating liquors shipped from another state into the state of Iowa did not become subject to the police power and the statutes of Iowa until such packages reached their final destination in that state.

Soon after the passage of this act of congress, the question of its constitutionality and effect was before this court in Rahrer's Case, 140 U. S., 545, and it was unanimously held that intoxicating liquors which had been sent before the passage of the act from the state of Missouri to the state of Kansas to be sold in the latter state were subject to the police power of the state of Kansas and to the statutes of that state. In determining the question Mr. Chief Justice Fuller, in delivering the opinion of the court, said:

"Congress did not use terms of permission to the state to act, but simply removed an impediment to the enforcement of the state laws in respect to imported packages in their original condition, created by the absence of a specific utter-

ance on its part. It imparted no power to the state not then possessed, but allowed imported property to fall at once upon arrival within the local jurisdiction. * * * This is not the case of a law enacted in the unauthorized exercise of a power exclusively confided to congress, but of a law which it was competent for the state to pass, but which could not operate upon articles occupying a certain situation until the passage of the act of congress. That act in terms removed the obstacle, and we perceive no adequate ground for adjudging that a re-enactment of the state law was required before it could have the effect upon imported which it had always had upon domestic property. Jurisdiction attached, not in virtue of the law of congress, but because the effect of the latter was to place the property where jurisdiction could attach."

In the case at bar the property was transported from Rock Island in the state of Illinois to its final destination in the city of Tama, state of Iowa, where it was then held by the plaintiffs in error and was, under the authority cited, subject to the police power of the state to the same extent as domestic property therein. It was not property in transit from one state to another, nor was it being carried through any part of the state of Iowa to reach the destination to which it had been consigned. When it was delivered at the place of its destination by the common carrier, its condition as property subject to the laws of congress regulating interstate commerce ceased, and it at once came within the jurisdiction of the laws of the state of Iowa.

The question whether it was held by plaintiffs in error for the purpose of being sold in violation of the laws of the state must be determined under the law of the state having jurisdiction of the property, and by the courts of that state.

The owners or persons in charge of the property voluntarily shipped the same from the state of Illinois into the state of Iowa when they knew that the moment it arrived at its destination in the latter state it would be subject to the police power and to the laws of that state; and that the question as to whether it was unlawfully kept for sale must be determined by the courts of the state having jurisdiction of the property.

The question whether the sale of the liquors in question was made in the state of Illinois or in the state of Iowa, and whether the express company acted as the agent of the consignor in making such sale and delivery, are questions wholly within the jurisdiction of the courts of Iowa, and in no wise relate to or contravene the authority of congress to regulate commerce among the several states.

It is therefore most respectfully submitted that the motion filed to dismiss the writ of error herein should be sustained by this court for the reason that no federal question is involved which gives to this court jurisdiction to hear and determine this cause.

CHARLES W. MULLAN,

Attorney General of Iowa,

Attorney for Defendant in Error.

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Clerk.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR

In the Supreme Court of the United States

OCTOBER TERM, 1904.

No. 67.

THE AMERICAN EXPRESS COMPANY AND R. M. COFFIN, PLAINTIFFS IN ERROR,

v.

THE STATE OF IOWA.

ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

(18,985.)

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ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

STATEMENT OF FACTS.

On the 31st day of March, 1900, an information was filed in the office of A. W. Guernsey, justice of the peace of Tama county, Iowa, charging the plaintiffs in error with keeping intoxicating liquors in said county with intent to sell the same in violation of law. Upon the filing of such information the justice of the peace issued a warrant to one W. T. Hollen, a constable of said county, directing him to search the premises described in the information and to seize all liquors with the vessels containing the same found therein, and to keep the same until final action thereon by the court.

On the 2d day of April, 1900, the constable returned said warrant into court, his return thereon showing that he had searched the premises described therein and had found and seized four packages of intoxicating liquors in the office of the American Express Company, in Tama, Tama county, Iowa, and in the building occupied by R. M. Coffin as a drug store, and as the office of said American Express Company; and that he then held said liquor subject to the further order of the court.

Notice of such seizure was given by the justice of the peace to plaintiffs in error, and they were duly summoned to appear before said justice on the 9th day of April, 1900, and show cause why the liquors and vessels seized under said warrant should not be forfeited, condemned and destroyed under the laws of the state of Iowa.

The cause came on for hearing before the justice of the peace on the 9th day of April, 1900, C. B. Bradshaw,

Esq., appearing as attorney for the defendant in error, and Willett & Huber, Esqs., appearing as attorneys for plaintiffs in error. The plaintiffs in error, as defendants in said action, filed their answer therein, setting forth among other things that on or about the 29th day of March, 1900, the American Express Company, as a common carrier, received from John Collum & Company, consignors at the city of Rock Island, in the state of Illinois, four boxes said to contain merchandise, respectively consigned to W. E Pauley, George Everhart, Link Hartsock and Bert Anderson at Tama, Iowa, and that said packages and each of the same were shipped by the consignor C. O. D. to the consignee. That said packages were transported by The American Express Company from Rock Island, Illinois, to Tama, Iowa, where they arrived on the 31st day of March, 1900, where they were received by the said R. M. Coffin, as agent of the Express Company, and by him were taken to his place of business in his drug store in Tama, which is the local office of The American Express Company at that place.

It is further alleged in said answer that said packages and each of them were still in transit in the possession of the Express Company and their agent, R. M. Coffin, acting for said company, at their office in Tama, Iowa, and had never been delivered to consignees or either of them at the time they were seized by the officer in the proceeding before the justice of the peace. That the charge against each of said packages is the sum of three dollars, which must be collected by the Express Company before the same can be delivered.

Under these facts The American Express Company and R. M. Coffin asked that the liquor seized by the constable be ordered returned.

Upon the trial of the proceeding before the justice of the peace, the following agreed statement of facts, which was filed in the case, was entered into by the parties:

It is hereby stipulated by the parties to the above entitled cause:

1st. That the defendant, the American Express Company, is a foreign corporation as alleged in defendant's answer.

2d. That said defendant express company has not nor has it at any time had or held a permit or other authority to sell intoxicating liquors in Tama county, Iowa.

3d. That the defendant, R. M. Coffin, is a registered pharmacist and holds a permit to sell intoxicating liquors for the purposes authorized by the laws of Iowa, but that he makes no claim that such permit authorizes any delivery of intoxicating liquors by him as agent of said express company which may be received by him as the agent of his company, and consigned to parties who may call for the same at the office of said company, nor is the delivery of such liquors by him for the said express company in any wise conducted under the regulations and laws prescribed by the state of Iowa for the sale of intoxicating liquors by him as a registered pharmacist and permit holder.

4th. That at the time the packages described in defendants' answer, which are the same packages seized under the warrant of seizure in this cause, were received for transportation by said express company, neither the defendant company nor its agents or employes knew or had any knowledge that the said packages contained intoxicating liquors, nor did said express company, its employes or either of the other defendants, Coffin and Crossman, know or have any knowledge of the actual contents of said packages seized herein until after the seizure thereof.

5th. It is conceded that said packages and each of them do contain intoxicating liquors of not less than one quart each, and that such liquors are in the original packages in which they were delivered to the defendant express com-

pany as a common carrier in the state of Illinois for transportation to Tama, Iowa.

6th. That the charge of three dollars on each package, mentioned in defendants' answer, is no part of the charges for transportation and no part of the compensation of said defendant express company for transporting the same, and that the said sum of three dollars is the purchase price of the goods contained in each package respectively, and that said express company is bound under its contract to collect for the shipper of said packages the sum of three dollars on each package before delivering the same to the consignee and to transmit to said shipper the sum of three dollars on each package.

7th. That the place of delivery of said packages to consignees is at the office of the said American Express Company in Tama, Tama county, Iowa, of which office the defendant, R. M. Coffin, is in charge as agent, and at the time of the seizure herein none of said packages had been delivered to the consignees or either of them. That said packages and each of them were shipped by consignors to consignees on their orders, given to the traveling agent of consignors at Tama, Iowa, and by him sent in to consignors subject to their approval and shipment thereunder.

8th. That in case the hearing of this cause should be on demurrer of plaintiffs to defendant's answer, each of the above admitted facts shall be considered in connection with the answer as fully and have the same effect in law as if alleged in said answer or made a part thereof.

C. B. BRADSHAW,
Attorney for Plaintiff.
WILLETT & HUBER,
Attorneys for Defendant.

The proceedings were tried upon said stipulation and the justice of the peace found that the packages of liquor seized under the warrant issued by him were kept by the plaintiffs in error for the purpose of being sold in violation of the laws of Iowa, and entered judgment that the same be forfeited and destroyed, to which judgment and order the plaintiffs in error excepted and gave notice of an appeal

to the district court of said county; and thereafter, and on the 16th day of April, 1900, plaintiffs in error perfected their appeal to the district court of Tama county, Iowa, by filing their bond as required by law.

Thereafter the plaintiffs in error filed an amendment to their answer in the proceeding before the justice of the peace, averring that under the facts in the case, as shown by the pleadings and stipulation of facts, a federal question arises under the constitution of the United States and the laws of congress, namely: That the plaintiffs in error were engaged in interstate commerce as common carriers, and that the state of Iowa has no power over goods in transit from one state to another, and under such interstate commerce rights the plaintiffs in error insisted that the liquors and packages in controversy be returned.

On the 16th day of January, 1901, the cause was tried and submitted in the district court of Iowa, without the intervention of a jury, and the judge of said court found that said liquors were wrongfully seized and ordered that they be returned to the Express Company and that the state of Iowa pay the costs of the prosecution, to which order and judgment the state excepted; and on the 23d day of March, 1901, perfected its appeal from said judgment to the supreme court of Iowa.

Thereafter on the 30th day of October, 1902, the cause came on for hearing in the supreme court of Iowa, and the judgment and order of the district court were reversed, the cause remanded for further proceeding, and a judgment entered against the plaintiffs in error for the costs of the appeal, the supreme court of Iowa holding in the opinion handed down by it that the intoxicating liquors

were kept by the plaintiffs in error with intent to be sold in violation of the laws of the state, and that they were rightfully seized and should have been destroyed.

Thereafter, and on the 4th day of May, 1903, plaintiffs in error sued out their writ of error to the supreme court of Iowa, and the cause is now before this court for hearing upon such writ.

BRIEF.

I.

Thirteen errors are assigned by plaintiffs in error, which really present one question only for determination by this court. That question may be stated as follows:

Does the law of Iowa, prohibiting the sale of intoxicating liquors, apply to a shipment from the state of Illinois, after the arrival of such intoxicating liquors at their destination in the state of Iowa and before they are delivered to the consignees thereof by the common carrier, where such liquors are shipped C. O. D. to the consignee, and it is the duty of the carrier to collect the purchase price thereof before delivering the same?

It is the contention of the plaintiffs in error that intoxicating liquors shipped C. O. D. from Illinois to the state of Iowa are merchandise in transit and protected by the interstate commerce clause until the same are delivered by the common carrier to the consignee; and are not subject to the laws of Iowa forbidding their sale within the state.

It is the contention of the defendant in error:

(1) Where merchandise is delivered by a consignor to a common carrier to be transported by such common carrier to the consignee, and the common carrier is required to collect from the consignee the purchase price of such merchandise before delivering the same to him, the sale is made at the place where the purchase price is paid and the merchandise delivered to the consignee.

(2) That intoxicating liquors which are shipped C. O. D. from another state into the state of Iowa cease to be protected by the interstate commerce clause upon arrival at their destination, and that under the act of congress of August 8, 1890, known as the Wilson bill, they at once upon arrival at their destination become subject to the operation and effect of the law of the state of Iowa.

(3) That no federal question is involved which gives this court jurisdiction to hear and determine this cause, for the reason that the decision of the supreme court of Iowa does not deny the authority of congress to regulate commerce among the several states.

II.

The ownership and possession of merchandise which is shipped C. O. D. remain in the consignor until it is delivered to the consignee by the common carrier upon payment of the purchase price, and the sale is made at the place of delivery, except where the consignee expressly designates the common carrier as his agent to transport and deliver such merchandise, or where the acts of the parties show that the consignor intended to part with his property and to trans-

fer the title and possession thereof to the consignee at the time of delivery to the common carrier.

United States v. Shriver, 23 Fed. Rep., 134;
United States v. Cline, 26 Fed. Rep., 515;
McElvee v. Met. Lumber Co., 69 Fed. Rep., 302;
McNeil v. Brawn, 53 N. J. Law, 617;
Thompson v. Cincinnati, W. & Z. R. Co., 1 Bond C. C., 152;
Hooper v. C. & N. R. Co, 27 Wis., 81;
Braddock Glass Co. v. Irwin, 153 Pa. St., 440;
Millheiser v. Erdman, 98 N. C., 292;
Stone v. Perry, 60 Me., 48;
Moakes v. Nicholson, 19 C. B. N. S., 290;
Hirshorn v. Canney, 98 Mass., 149;
Daugherty v. Fowler, 44 Kan., 628;
Suit v. Woodhall, 13 Mass., 391;
Wasserboehr, v. Poulier, 84 Me., 165;
Lane v. Chadwick, 146 Mass., 68;
Benjamin on Sales (1883), Sec. 1040.
State v. O'Neil, 58 Vt., 140;
Brewing Co. v. DeFrance, 91 Iowa, 108;
State v. U. S. Ex. Co., 70 Iowa, 271;
The Francis, 13 U. S., 183;
Mechem on Sales, Secs. 494, 502, 740.

III.

The place of the sale of goods or merchandise is the place of delivery; that is, where the sale is completed by delivery.

Dow v. Gould, etc., Silver Min Co., 31 Calif., 629;
Mead v. Dayton, 28 Conn., 39;

Lewis v. McCabe, 49 Conn., 155 (44 Am. Rept., 217);
Weil v. Golding, 141 Mass., 364.

IV.

Under the act of congress of August 8, 1890, all fermented, distilled or other intoxicating liquors transported into any state or remaining therein for use, consumption, sale or storage, are, upon arrival in such state, subject to the operation and effect of the laws of the state to which they are shipped, and subject to the police powers of such state, to the same extent as domestic property therein, whether such liquors are transported in original packages or otherwise.

26 U. S. Stat., 313, c. 728;
In re Rahrer, 140 U. S., 545;
Rhodes v. Iowa, 170 U. S., 412.

V.

Where merchandise is shipped C. O. D., the liability of the carrier ceases and that of a warehouseman attaches at the time of the arrival of such merchandise at the place of its destination.

Weed v. Barney, 45 N. Y., 344 (6 Am. Rept., 96);
Gilson v. Am. Merchants Union Ex. Co., 1 Hun. (N. Y.), 387;
Marshall v. Am. Ex. Co., 7 Wis., 1 (73 Am. Dec., 381);
Pac. Ex. Co. v. Wallace, 60 Ark., 100 (61 Am. & Eng. R. Cases, 170);
Schouler on Bailments and Carriers (2d ed.), Sec. 507;

VI.

There is no duty or obligation arising out of the nature of a carrier's business which requires such carrier to collect payment of the price of goods transported by it as a condition precedent to their delivery. Such obligation arises, if at all, by special contract, express or implied.

Cox v. Columbus, etc., R. Co., 91 Ala., 392 (49 Am. & Eng. R. Cases, 112);
Union R. Co. v. Riegel, 73 Pa. St., 72.

VII.

The statute of Iowa under which the liquors were seized and condemned is set out upon pages 19 and 20 of the transcript of the record.

VIII.

In the seventh paragraph of the agreed statement of facts, it is expressly stipulated that the packages of intoxicating liquors in question were to be delivered to the consignees at the office of the American Express Company in Tama, Tama county, Iowa. (Transcript of record, p. 5.)

ARGUMENT.

I.

In the case at bar the intoxicating liquors were by the consignor delivered to the American Express company, a common carrier, at Rock Island, in the state of Illinois, to be transported by such carrier to the city of Tama in the state of Iowa, and then delivered to the consignees upon the condition that such consignees pay the purchase price thereof to the express company at the time of delivery. They were shipped C. O. D. which, as is generally and

ordinarily understood, means that the carrier shall collect the purchase price on delivery. The effect of such a shipment was that no rightful delivery of the goods could be made except upon the payment of the purchase price, and the intent of the consignor clearly appears to have been that he should retain the title to the liquors so shipped until the purchase price was paid and a delivery thereof made by the express company as his agent.

It is the contention of the defendant in error that under such a contract of sale, the ownership and possession of the intoxicating liquors remained in the consignor until there was a delivery to the consignee by the common carrier, and that the completed sale of such liquors could only be made at the place where the same were delivered to the consignees.

While the question has never been directly before this court, there are many cases where it has arisen in inferior courts and in the courts of last resort in the several states, and the weight of authority is that the title to merchandise shipped C. O. D., and which is not to be delivered by the common carrier until the purchase price is paid, remains in the consignor until the purchase price is paid and a delivery thereof made by the common carrier as agent of the consignor.

In *United States v. Cline*, 26 Fed. Rep., 515, 516, it is said:

"If a vendor delivers an article ordered to a common carrier marked C. O. D., and directed to an intended purchaser, the contract of sale is completed at the place of delivery to the purchaser on the payment of the price, as the common carrier is the agent of the vendor for the purpose expressed, and the ownership of the property set apart for the purchaser does not pass to him until he pays the price."

In *McElwee v. Met. Lumber Co.*, 69 Fed. Rep., 305, it is said:

"Undoubtedly the general rule is that if the seller obligates himself as a part of his contract to deliver the property to the buyer at some specified place, title will not pass until such delivery. The Venus, 8 Cranch, 275; *Sneathen v. Grubbs*, 88 Pa. St., 147; Benjamin on Sales, Secs. 325, 377; *Com. v. Greenfield*, 121 Mass., 40."

In *Wasserboehr v. Boulier*, 84 Me., 167, it is said:

"It was in accordance with these general principles that the courts have held that the price of liquors sold and delivered in a state where such sale is legal, and nothing remains to be done by the vendor to complete the transaction, can be recovered in another state where such sale would be illegal. *Torrey v. Corliss*, 33 Me., 333; *Banchor v. Cilley*, 38 Me., 553; *Orcutt v. Nelson*, 1 Gray, 536; *McIntyre v. Parks*, 3 Metc., 207; *Milliken v. Pratt*, 125 Mass., 374; *Scudder v. Union Nat. Bank*, 91 U. S., 406. Though it is otherwise if the contract contains any ingredient or participation on the part of the original vendor that the goods shall be illegally sold, or that he shall do any act beyond the mere sale to assist or facilitate the illegal act, or to aid the purchaser in his unlawful design in the subsequent unlawful disposition of the goods; *or if the goods are to be delivered in a place where the sale is prohibited. Smith v. Godfrey*, 28 N. H., 379; *Banchor v. Mansel*, 47 Me., 58; *Hill v. Spear*, 50 N. H., 253; *Lindsey v. Stone*, 123 Mass., 332; *Wilson v. Stratton*, 47 Me., 120, 127."

In the case last referred to it was held that although the intoxicating liquors in question were delivered to a common carrier at Boston, Mass., the sale was made in the state of Maine, as the delivery was made in that state, and recovery was denied under its laws.

In *McNeil v. Brawn*, 53 N. J. Law, 620, it is said:

"It is sometimes stated as a general rule that delivery to the carrier is delivery to the consignee, and that the goods

are to be carried to their destination at his risk; but an examination of the decisions to that effect will show that this doctrine prevails only where the contract of sale, as between the consignor and consignee, was concluded at the place of shipment, and the undertaking to ship was collateral to the contract of sale, as in *Tregelles v. Sewell*, 7 Hurlst. & N., 573. It will also be found that the rule uniformly adopted in the line of decisions is that the risk of loss in transportation depends upon the nature of the transaction, the terms of the contract, and the intention of the parties. In *Dunlop v. Lambert*, Lord Cottonham said: 'When the party undertaking to consign undertakes to deliver at a particular place, the property, till it reaches that place and is delivered according to the terms of the contract, is at the risk of the consignor.' In *Calcutta Co. v. DeMattos*, Mr. Justice Blackburn said: 'There is no rule of law to prevent the parties from making whatever bargain they please. If they use words in the contract showing that they intend that the goods shall be shipped by the person who is to supply them on terms that when shipped they shall be the consignee's property and at his risk, so that the vendor shall be paid for them whether they are delivered at the port of destination or not, this intention is effectual. * * * If the parties intend that the vendor shall not only deliver them to the carrier, but also undertake that they shall be actually delivered at their destination and express such intention, this is also effectual. In such case, if the goods perish in the hands of the carrier, the vendor is not only not entitled to the price, but he is liable for whatever damage may have been sustained by the purchaser in consequence of the breach of the vendor's contract to deliver at the place of destination.' "

In *Moakes v. Nickolson*, 19 C. B. N. S., 290, it was held where coals were sold at Hull and shipped on board a vessel chartered by the buyer, to be paid for in cash against bill of lading in hands of seller's agent in London, that no property passed to the buyer until the condition was fulfilled, and that the price being unpaid the seller was entitled to intercept delivery.

In *Braddock Glass Co. v. Irwin & Co.*, 153 Pa. St., 443, the supreme court of Pennsylvania, in passing upon the correctness of certain instructions given by the trial court to the jury, said:

"This instruction ignores the recognized principle that where goods are carried by the vendor to a certain place and there delivered to the vendee, the carrier is the agent of the former and not the latter, and that the vendor is responsible for the negligence or misconduct of his agent. *McNeil v. Bawn*, 53 N. J. Law, 617; *Sweathen v. Grubbs*, 88 P. St., 147; *Scott v. Wells*, 6 W. & S., 357; Benjamin on Sales (1883), Sec. 1040."

Mr. Benjamin, in his work on sales, section 1040 (1883) says:

"If, however, the vender should sell goods, undertaking to make the delivery himself at a distant place, thus assuming the risks of carriage, the carrier is the vendor's agent."

The case of *Dunlop v. Lambert*, 6 Cl. & F., 600, being cited in support of the text.

In *Stone v. Perry*, 60 Me., 50, it is said:

"If goods are sold conditionally and delivery made according to the custom of trade before conditions are complied with, in expectation of compliance, the delivery is also conditional, and no title vests in the purchaser until performance of the condition."

The delivery of the liquors in question to the plaintiffs in error at Rock Island, Illinois, did not make a complete sale, as no delivery thereof was to be made by the carrier to the consignees until the purchase price was paid at the place of destination. The carrier was made the agent of the consignor for the purpose of completing the sale by

delivering the liquors to the consignees at Tama, Iowa, when they paid the purchase price thereof at the place of delivery. The case clearly falls within the principle of law laid down by the authorities cited, and the sale was to to be made by delivery of the liquors at Tama, Iowa, and the title and possession thereof remained in the consignor until such delivery was made.

In *Lane v. Chadwick*, 146 Mass., 68, the plaintiff ordered goods from a wholesale druggist in Boston to be shipped to her by express C. O. D. The goods were so shipped, nailed up in boxes, and accompanied by an itemized bill. The defendant, an express messenger, took the goods to plaintiff's store and demanded the amount of the bill with express charges on delivery of the boxes. The plaintiff refused to pay until she had had an opportunity to examine the contents of the boxes and compare the contents with the bill. The defendant refused to permit such an examination and took the boxes away. Subsequently the plaintiff procured a writ of replevin and went to the defendant with an officer and in his presence tendered to the defendant the amount of the bill and express charges, and showing the bill of items demanded that those specific goods be delivered to her. The defendant replied that he knew nothing about the particular goods, and could not be responsible for the contents of the boxes but said he was ready to deliver the boxes. The plaintiff refused to accept the boxes without knowledge of their contents, and the writ of replevin was served. The goods named in the itemized bill were all in the boxes. The cause was tried to the superior court without a jury, and plaintiff brought the case to the supreme judicial court of Massachusetts

upon exceptions. Chief Justice Morton, in passing upon the question, said:

"The delivery to the carrier was not a delivery to the plaintiff. He was not her agent but the agent of the consignor: *Merchants Nat. Bank v. Bangs*, 102 Mass., 291. Until he delivered the goods to her, no title or right of possession would pass to her, and it is immaterial whether he rightfully or wrongfully refused to make the delivery. At the time she replevied the goods she had no title or right of possession."

In the case of the *State v. O'Neil*, 58 Vt., 140, intoxicating liquors were delivered to the National Express Company in the state of New York, to be by it transported to the state of Vermont and there delivered to the consignees upon the payment of the purchase price and cost of transportation; that is, the liquors were shipped by the consignor to the consignee C. O. D., and the express company was required to collect the purchase price before delivery. Upon their arrival in the state of Vermont, and while in the possession of the express company, they were seized under the Vermont law upon the ground that they were held by the express company for the purpose of being sold in violation of law. The agent of the express company in Vermont appeared in the proceedings and claimed the liquors upon the ground that they were not held by him with intent to be sold in violation of law. The case was tried upon the issue so raised, the liquors were ordered destroyed, and an appeal from such judgment was taken to the supreme court of the state.

The case, therefore, is in almost every particular identical with the one at bar; and while it is not conclusive as an authority in this court, an excerpt of the opinion is given because of the apparent soundness of the principles

of law therein enunciated. Mr. Chief Justice Royce, in delivering the opinion of the court, said:

"If the purchase and sale of the liquors was fully completed in the state of New York, so that upon delivery of them to the express company for transportation the title vested in the consignees, as in the case of a completed and unconditional sale, then no offense against the laws of this state has been committed. If, on the other hand, the sale by its terms could only become complete so as to pass the title in the liquors to the consignees upon the doing of some act, or the fulfilling of some condition precedent after they had reached Rutland, then the rulings of the county court upon the question of the offense were correct.

"The liquors were ordered by residents of Vermont from dealers doing business in the state of New York, who selected from their stock such quantities and kinds of goods as they thought proper in compliance with the terms of the orders, put them up in packages, directed them to the consignees, and delivered them to the express company as a common carrier of goods for transportation, accompanied with a bill, or invoice for collection. The shipment was in each instance, which it is necessary here to consider, 'C. O. D.', and the cases show that the effect of the transaction was a direction by the shipper to the express company not to deliver the goods to the consignees except upon payment of the amount specified in the C, O. D. bills, together with the charges for the transportation of the packages and for the return of the money paid. This direction was understood by the express company, which received the shipments coupled therewith.

"Whether or not, and when the legal title in property sold passes from the vendor to the vendee, is always a question of the intention of the parties, which is to be gathered from their acts, and all the facts and circumstances of the case taken together. In order that the title may pass, as was said by Morton J., in *Mason v. Thompson*, 18 Pick., 305:

"'The owner must intend to part with his property, and the purchaser to become the immediate owner. Their two minds must meet on this point; and if anything remains to

be done before either assents, it may be an inchoate contract, but is not a perfect sale.'

"The authorities seem to be uniform upon this point, and the acts of the parties are regarded as evidence by which the court or jury may ascertain and determine their intent. Benj. Sales, Secs. 311, 319, note C: 'When there is a condition precedent attached to the contract, the title in the property does not pass to the vendee until performance or waiver of the condition, even though there be an actual delivery of possession.'

"In cases under consideration the vendors of the liquors shipped them in accordance with the terms of the orders received, and the mode of shipment was as above stated. They delivered the packages of liquors, properly addressed to the several persons ordering the same, to the express company, to be transported by the company and delivered by it to the consignees upon fulfillment by them of a specified condition precedent, namely: Payment of the purchase price and transportation charges, and not otherwise. Attached to the very body of the contract, and to the act of delivery to the carrier, was the condition of payment before delivery of possession to the consignee. With this condition unfulfilled and not waived, it would be impossible to say that a delivery to the carrier was intended by the consignor as a delivery to the consignee, or as a surrender of the legal title. The goods were intrusted to the carrier to transport to the place of destination named, there to present them for acceptance to the consignee, and if he accepted them and paid the accompanying invoice and the transportation charges, to deliver them to him; otherwise to notify the consignor and hold them subject to his order. It is difficult to see how a seller could more positively and unequivocally express his intention not to relinquish his right of property or possession in goods until payment of the purchase price than by this method of shipment. We do not think the case is distinguishable in principle from that of a vendor who sends his clerk or agent to deliver the goods, or forward them to, or make them deliverable upon the order of his agent, with instructions not to deliver them except on payment of the price, or performance of some other specified condition precedent by the vendee. The vendors made the express company their agent in the matter of the delivery of the goods, with instructions not to

part with the possession of them except upon prior or contemporaneous receipt of the price. The contract of sale therefore remained inchoate or executory while the goods were in transit, or in the hands of the express company, and could only become executed and complete by their delivery to the consignee. There was a completed executory contract of sale in New York; but the completed sale was, or was to be, in this state."

In *Wagner v. Hallack*, 3 Colo., 184, it is said:

"The goods were shipped to the agent of plaintiffs and marked C. O. D. These initials have a well known commercial meaning, and show clearly that the plaintiffs did not intend to give credit to anyone. Their purpose is manifest to retain control of the goods and thereby secure themselves against the default of either Heenan or the defendants. The delivery to the carrier, therefore, was not a delivery to the buyer, and the *jus disponendi* remained in the vendor."

Mr. Benjamin in his work on Sales states the general principle as follows:

"Where goods are delivered on board of a vessel to be carried, and a bill of lading is taken, the delivery by the vendor is not a delivery to the buyer, but the captain as bailee for delivery to the person indicated by the bill of lading as the one to whom they are to be carried. This principle runs through all the cases and is clearly enunciated by Park, B., in *Wait v. Baker;* by Byles, J., in *Moakes v. Nicholson;* by Bramwell & Cleasby, B. B., in *Gabaron v. Kreeft;* and by Cotton, L. J., in *Mirabita v. Imperial Ottoman Bank.*"

In the case at bar the goods were intrusted to a carrier to be transported by him to the place of residence of the consignee, and there to be presented to such consignee for acceptance, and if he accepted them and paid the purhcase price thereof, they were, by such carrier, as the agent of the consignor, to be delivered to the consignee. It is diffi-

cult to conceive of a case where a seller of goods could more positively and unequivocally express his intention not to part with the title or possession until the purchase price was paid.

As is said in the Vermont case, such a transaction is not distinguishable in principle from that of a vendor who sends his clerk to deliver goods to a purchaser, with instructions not to deliver them except upon the payment of the price. In such a case there could be no question that the seller did not part with the title of the goods so long as they remained undelivered in the possession of his clerk. The clerk, in the case supposed, would be his agent to deliver the goods when certain conditions were performed by the purchaser. In the case at bar the plaintiff in error was designated by the consignor as his agent to deliver the intoxicating liquors to the consignee upon the performance of a specified condition on the part of the consignee, viz: the payment of the purchase price to the agent before delivery.

It must, therefore, as it seems to us, be held that the sale of the intoxicating liquors in question was not consummated or completed in the state of Illinois, and that the American Express Company, as the agent of the consignor, held the same in the city of Tama in the state of Iowa with the intention of selling the same to the consignees in violation of the Iowa statute.

In reaching the conclusion above stated, based in a large degree upon the authorities referred to, we do not wish to be understood as saying that the cases upon this question are uniform. There is a conflict in the decisions of the courts of last resort of the states, and several of them have

announced a principle of law governing transactions of this character which is opposed to the conclusions here reached, notably Alabama, Arkansas, Kentucky and West Virginia, but the rule announced by the authorities cited appears to us to be the sounder and more logical principle of law, and to be in harmony with the well recognized principles governing the sale of property.

II.

It may be fairly stated in general terms, that the place of the sale of goods or merchandise is the place of delivery, that is, where the sale is completed by delivery.

As bearing upon this question the attention of the court is called to the case of *Thompson & Foreman v. Cincinnati, W., etc., R. Co.*, 1 Bond, 152. In that case the plaintiffs were manufacturers of railroad iron in Wales, and contracted to sell the defendant 9,000 tons at $38 a ton, 2,500 tons of which were to be shipped to New Orleans on or before the 15th day of September, 1852, 2,500 tons by the 1st of January following, and the remaining 4,000 tons to be shipped to New York by the 1st of January following. The whole of the 9,000 tons of iron was shipped by the plaintiff, and 590 tons were lost at sea. The remaining tons were received by the defendant and paid for according to contract, except a balance of $24,827.25. Action was brought against the defendant for the whole of the 9,000 tons at the contract price, and in the same action they sought to recover the $24,827.25 unpaid upon iron delivered. In passing upon the rights of the plaintiffs to recover, the court said:

"It seems clear, taking the whole contract together, that the plaintiffs were bound to deliver the iron at the

times and places mentioned, and that there was no obligation to pay until and unless it was delivered. Indeed it is a part of the contract that defendant shall make payment for the iron as the same is delivered, implying that the delivery was a condition precedent to the obligation to pay. * * * If the contract is for the delivery of the iron, it follows that the plaintiff is liable for damages sustained by defendant for the non-delivery. The risk of the transportation was on the plaintiff."

III.

It may also be stated as a general principle of law that where merchandise is shipped C. O. D., the liability of the carrier ceases, and that of a warehouseman attaches, at the time of the arrival of such merchandise at the place of its destination. When, therefore, the liquor in question arrived at the office of the American Express Company in Tama, Iowa, the duty of that company as a common carrier had been fully performed, and its liability as a carrier of goods ceased. It then held the liquors as a warehouseman and in storage to be delivered to the consignees upon the condition imposed by the consignor, viz: The payment of the purchase price thereof. It is no part of the duty of a common carrier to collect and remit the purchase price of goods transported by such carrier.

By requiring the purchase price to be paid before delivery of the liquors in question, the consignor reserved the *jus disponendi* thereof, and no title could pass to the consignee except upon payment of the purchase price and the delivery by the express company. Upon such delivery, therefore, the sale of the intoxicating liquors would be made in the state of Iowa, and not in the state of Illinois.

It therefore logically follows that the liquors were in possession of the plaintiffs in error with intent to be sold in violation of the laws of Iowa, and were subject to seizure and destruction under the laws of the state, unless protected by the interstate commerce clause of the constitution, and the laws of congress on that subject.

IV.

Were the liquors in question, after their arrival at their destination in the city of Tama, in the state of Iowa, goods which were being transported from one state to another and protected by the interstate commerce clause?

It is conceded by defendant in error, that, except for the act of congress of August 8, 1890, the liquors in question, so long as they remained in the original package in the possession of the common carrier at their place of destination, would be merchandise in the course of transportation and protected from the operation of the laws of the state of Iowa by the interstate commerce clause. That question was settled in *Leisy v. Hardin*, 135 U. S., 100, and the doctrine therein announced has since been adhered to by this court.

In *Rhodes v. Iowa*, 170 U. S., 412, this court held that intoxicating liquors shipped from Illinois to the state of Iowa were not within the jurisdiction of the laws of Iowa until they reached their destination in the latter state; that is, that the law of Iowa could not constitutionally attach to such goods the moment they arrived at the state line and while they were being transported under the interstate commerce law to their place of destination. In determining the question then presented to the court, it said:

"We think that interpreting the statute by the light of all its provisions, it was not intended to and did not cause the power of the state to attach to an interstate commerce shipment, whilst the merchandise was in transit under such shipment, and until its arrival at the point of destination and delivery there to the consignee, and of course this conclusion renders it entirely unnecessary to consider whether, if the act of congress had submitted the right to make interstate commerce shipments to state control, it would be repugnant to the constitution."

The act of congress of August 8, 1890, provides:

"All fermented, distilled or other intoxicating liquors or liquids transported into any state or territory or remaining therein for use, consumption, sale or storage therein, shall, upon arrival in such state or territory, be subject to the operation and effect of the laws of such state or territory enacted in the exercise of its police powers to the same extent and in the same manner as though such liquids or liquors had been produced in such state or territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise."

This enactment of congress followed the decision of this court in the case of *Leisy v. Hardin* and, as a matter of common knowledge, was enacted for the purpose of preventing the shipment of intoxicating liquors in original packages from one state into another to be there sold in violation of law. Under the decision in the Leisy case, intoxicating liquors could be shipped from one state into another and sold by the consignee in violation of the state law in the original packages in which they were shipped, and such liquors did not become a part of the common property within the state until sold by the consignee. In deciding the question in the Leisy case, the court said:

"Under our decision in *Bowman v. Chicago, etc., Ry. Co., supra*, they (the plaintiffs in error) had the right to import this beer into that state, and in the view which we have

expressed they had the right to sell it, by which act alone it would become mingled in the common mass of property within that state. Up to that point of time we hold that, in the absence of congressional permission to do so, the state had no power to interfere by seizure or any other action in prohibition of importation and sale by a foreign or non-resident importer. * * * "

In that case this court clearly recognized the power of congress to permit the laws of a state to attach to property imported within the state after its arrival therein and before it became a part of the common mass of property within such state. The act of congress of August 8, 1890, not only grants permission for the operation of state laws upon property imported into the state and at a time prior to its becoming a part of the mass of the property of the state, but it affirmatively declares that all fermented, distilled or other intoxicating liquors transported into any state or territory, or remaining therein for use, consumption, sale or storage, shall, upon arrival in such state or territory, be subject to the operation and effect of the laws of such state or territory.

In determining the effect of the congressional enactment, this court in *In re Rahrer*, 140 U. S., 559, 560, said:

"The laws of Iowa under consideration in *Bowman v. Railway Co.*, 125 U. S., 465, and *Leisy v. Hardin*, 135 U. S., 100, were enacted in the exercise of the police power of the state, and not at all as regulations of commerce with foreign nations and among the states, but as they inhibited the receipt of an imported commodity, or its disposition before it had ceased to become an article of trade between one state and another, or another country than this, they amounted in effect to a regulation of such commerce. Hence, it was held that inasmuch as interstate commerce, consisting in the transportation, purchase, sale and exchange of commodities, is national in its character and must be governed by a uniform system, so long as con-

gress did not pass any law to regulate it specifically, or in such way as to allow the laws of the state to operate upon it, congress thereby indicated its will that such commerce should be free and untrammelled, and therefore that the laws of Iowa, referred to, were inoperative, in so far as they amounted to regulations of foreign or interstate commerce, in inhibiting the reception of such articles within the state, or their sale upon arrival, in the form in which they were imported there from a foreign country or another state. It followed as a corollary, that when congress acted at all, the result of its action must be to operate as a restraint upon that perfect freedom which its silence insured.

"Congress has now spoken, and declared that imported liquors or liquids shall, upon arrival in a state, fall within the category of domestic articles of a similar nature. Is the law open to constitutional objection?"

Here again we have the recognition of the power of Congress to permit the laws of the state to attach to and affect imported goods upon their arrival within the territory of the state, and before such goods become a part of the common mass of property within the state which is subject to its laws. And in the Rahrer case it was held that the petitioner was liable to prosecution and punishment under the laws of Kansas for selling intoxicating liquors which had been shipped to him from the state of Missouri before the act of congress referred to, although he sold such liquors in the original packages in which they were received by him. That is, this court directly held that the laws of Kansas became operative and effective, under the permission given by congress in the act referred to, as to intoxicating liquors imported into the state of Kansas before they became a part of the common mass of the property within that state, notwithstanding the fact that such liquors were imported into the state of Kansas prior to the act of congress.

In *Rhodes v. Iowa* it was held that under the act of congress referred to, the laws of a state do not attach or become operative as to intoxicating liquors imported from another state or country, until such liquors arrive at the destination within the state to which the shipment is made. The liquors in question in the case at bar had arrived at their destination at the time they were seized by the state authorities. It is true they had not been sold nor had they then become a part of the common mass of property of the state, but under the act of congress referred to, they were subject to the operation and effect of the laws of Iowa enacted in the exercise of its police power, to the same extent and in the same manner as though such liquors had been produced in the state.

The act provides that such liquors shall, upon their arrival in such state or territory, be subject to the operation and effect of its laws. It is not required by the language of the act or, as it seems to us, by any construction which can be placed upon it, that the liquors must either be delivered to the consignee by the carrier or be by him sold before becoming subject to the state laws. The act itself has declared in as broad language as possible that they shall become subject to the state laws upon arrival in such state or territory. This court has held that the phrase "arrival in such state or territory" means arrival at the destination to which the shipment is made.

It then logically follows that if such liquors are, after their arrival at the destination to which shipment is made, held by the carrier or other person for sale in violation of law, they are subject under the laws of Iowa to seizure and condemnation.

The facts involved in the case at bar are precisely those which the act of congress was framed to meet. The object and purpose of the act was to make all intoxicating liquors shipped from one state into another, or from another country into a state, subject to the laws of the state the moment they arrived at their destination within that state, and to prevent the shipment and sale of intoxicating liquors in such state in violation of its laws.

It may be urged that the act of delivery by the common carrier to the consignee is a part of the transaction of interstate commerce; but as it seems to us, it is a sufficient answer to any such suggestion to say that congress has by express enactment declared intoxicating liquors in the hands of a common carrier at the place of their destination, subject to the police powers and the police regulations of the state, and that a delivery thereof to the consignee is not necessary before the state law becomes effective.

V.

Is there a federal question involved which gives this court jurisdiction to hear and determine this case?

The decision of the state court is based upon the proposition that, where merchandise is shipped C. O. D. from one state to another, the sale is made in the state where such merchandise is delivered by the common carrier and the purchase price paid by the consignee; and as has been shown, the same doctrine has been held in numerous other jurisdictions. The question presented to the Iowa court for determination was simply whether the sale of liquors under such circumstances was consummated in the state of Illinois or in the state of Iowa, and the determination of that question did not draw in question the validity

of a treaty or statute of, or an authority exercised under, the United States, the decision of which is against their validity, nor did it draw in question the validity of a statute of, or authority exercised under, any state on the ground of their being repugnant to the constitution, treaties or laws of the United States, the decision of which is in favor of their validity, or where any title, right, privilege or immunity is claimed under the constitution or any treaty or statute of, or commission held or authority exercised under, the United states, the decision of which is against the title, right, privilege or immunity specially set up or claimed by either party under such constitution, treaty, statute, commission or authority.

The question determined by the Iowa court is one wholly within its jurisdiction, and its determination is simply the exercise of it police powers.

Beyond this no direct issue was made in either of the state courts that the liquors were merchandise which were being transported from one state to another under the interstate commerce clause of the constitution, and that question is now raised directly for the first time by the assignment of errors in this court.

The case of *O'Neil v. Vermont*, 144 U. S., 32?, is on all fours with the case at bar, and it was there held that no federal question was involved which gave this court jurisdiction to hear and determine the controversy.

In conclusion it is respectfully submitted:

(1) That the sale of the intoxicating liquors in question was not consummated or completed in the state of Illinois, but was to be made in the city of Tama in the state

of Iowa, upon the delivery thereof to the consignees and and upon payment by them of the purchase price to the common carrier.

(2) That the plaintiff in error was the agent of the consignor in completing and consummating such sale, and that when he held such liquors in his possession in Iowa with intent to complete such sale, they were held by him to be sold in violation of the laws of that state.

(3) That under the act of congress of August 8, 1890, the laws of Iowa attached and became operative upon the liquors in question upon their arrival at their destination, and while in the hands of the common carrier and before delivery to the consignees.

(4) That no federal question is involved herein which gives this court jurisdiction to hear and determine the cause.

CHARLES W. MULLAN,
Attorney General of Iowa,
for Defendant in Error.

Supreme Court of the United States.

No. 67.—October Term, 1904.

The American Express Company and R. M. Coffin, Plaintiffs in Error, *vs.* The State of Iowa. } In error to the Supreme Court of the State of Iowa.

[January 3, 1905.]

The American Express Company received at Rock Island, Illinois, on or about March 29, 1900, four boxes of merchandise to be carried to Tama, Iowa, to be there delivered to four different persons, one of the packages being consigned to each. The shipment was C. O. D., three dollars to be collected on each package, exclusive of thirty-five cents for carriage on each. On March 31 the merchandise reached Tama, and on that day was seized in the hands of the express agent. This was based on an information before a justice of the peace, charging that the packages contained intoxicating liquor held by the express company for sale. The express company and its agent answered, setting up the receipt of the packages in Illinois, not for sale in Iowa, but for carriage and delivery to the consignees. An agreed statement of facts was stipulated admitting the receipt, the carriage, and the holding of the packages as above stated. The seizure was sustained. Appeal was taken to a District Court. The express company and its agent amended their answer, specially setting up the commerce clause of the Constitution of the United States. There was judgment in favor of the express company, and the State of Iowa appealed to the Supreme Court and obtained a reversal. (118 Iowa, 447.) This writ of error was prosecuted.

Mr. Justice White, after making the foregoing statement, delivered the opinion of the Court.

Although the majority of the Supreme Court of Iowa doubted the correctness of a ruling previously made by that court, nevertheless it was adhered to under the rule of *stare decisis*, and was made the basis of the decision in this cause. In the previous case it was held by the Supreme Court of Iowa that, where merchandise was received by a carrier with a duty to collect the price on delivery to the consignee, the merchandise remained the property of the consignor, and was held by the carrier as his agent with authority to complete the sale. Upon this premise it was decided that intoxicating liquors shipped C. O. D. from another State were subject to

be seized on their arrival in Iowa in the hands of the express company. Sustaining upon this principle the seizure in this case, the Supreme Court of Iowa did not expressly consider the defence based on the commerce clause of the Constitution of the United States, because the court deemed that its ruling on the subject of the effect of the C. O. D. shipment was a wholly non-Federal ground, broad enough to sustain the conclusion reached. And this the court considered was sanctioned by *O'Neil* v. *Vermont*, (144 U. S. 324.)

In accord with the opinion of the Supreme Court of Iowa it is insisted at bar that this writ of error should be dismissed for want of jurisdiction, because the decision below involved no Federal question, and the case of *O'Neil* v. *Vermont, supra*, is relied upon. The contention is untenable. As pointed out in *North Carolina R. R. Co.* v. *Sims*, (191 U. S. 446,) the view taken of the O'Neil case is a mistaken one. True, in that case the Supreme Court of Vermont gave to a C. O. D. shipment the effect attributed to it by the Supreme Court of Iowa in this case. True, also, a writ of error was prosecuted from this court to the Vermont court upon the assumption that the commerce clause of the Constitution was involved, but this court dismissed the writ of error because it did not appear that the commerce clause of the Constitution was relied on in the State court, was in any way called to the attention of that court, or was passed upon by it. As on this record it appears that the protection of the commerce clause was directly invoked in the State court, it is apparent that the O'Neil case is inapposite. And as, in order to decide the contention that the judgment below rests upon an adequate non-Federal ground, we must necessarily consider how far the C. O. D. shipment was protected by the commerce clause of the Constitution, which is the question on the merits, we pass from the motion to dismiss to the consideration of the rights asserted under the commerce clause of the Constitution.

We can best dispose of such asserted rights by a brief reference to some of the controlling adjudications of this court.

In *Bowman* v. *Chicago*, (125 U. S. 465,) it was held that the statutes of Iowa, forbidding common carriers from bringing intoxicating liquors into the State of Iowa from another State or Territory without obtaining a certificate required by the laws of Iowa, was void, as being a regulation of commerce between the States, and, therefore, that those laws did not justify a common carrier in Illinois from refusing to receive and transport intoxicating liquors consigned to a point within the State of Iowa.

In *Leisy* v. *Hardin*, (135 U. S. 100,) it was held that a law of the State of Iowa, forbidding the sale of liquor in that State, could not be made to apply to liquors shipped from another State into Iowa, before the merchandise had been delivered in Iowa and there sold in the original package, without causing the statute to be a regulation of commerce repugnant to the

Constitution of the United States. In *Rhodes* v. *Iowa*, (170 U. S. 412,) the same doctrine was reiterated, except that it was qualified to the extent called for by the provisions of the act of Congress of August 8, 1891, (26 Stat. 313,) commonly known as the Wilson Act. In that case a shipment of intoxicating liquors had been made into the State of Iowa from another State, and the agent of the ultimate railroad carrier in Iowa was proceeded against for an alleged violation of the Iowa law, because when the merchandise reached its destination in Iowa he had moved the package from the car in which it had been transported to a freight depot, preparatory to delivery to the consignee. The contention was that, as by the Wilson Act, the power of the State operated upon the property the moment it passed the State bounday line, therefore the State of Iowa had the right to forbid the transportation of the merchandise within the State and to punish those carrying it therein. This was not sustained. The court declined to express an opinion as to the authority of Congress, under its power to regulate commerce, to delegate to the States the right to forbid the transportation of merchandise from one State to another. It was, however, decided that the Wilson Act manifested no attempt on the part of Congress to exert such power, but was only a regulation of commerce, since it merely provided, in the case of intoxicating liquors, that such merchandise, when transported from one State to another, should lose its character as interstate commerce upon completion of delivery under the contract of interstate shipment, and before sale in the original packages.

The doctrine of the foregoing cases was applied in *Vance* v. *Vandercook Company, No. 1*, (170 U. S. 438, 442,) to the right of a citizen of South Carolina to order from another State, for his own use, merchandise, consisting of intoxicating liquors, to be delivered in the State of South Carolina.

Coming to test the ruling of the court below by the settled construction of the commerce clause of the Constitution, expounded in the cases just reviewed, the error of its conclusion is manifest. Those cases rested upon the broad principle of the freedom of commerce between the States and of the right of a citizen of one State to freely contract to receive merchandise from another State, and of the equal right of the citizen of a State to contract to send merchandise into other States. They rested also upon the obvious want of power of one State to destroy contracts concerning interstate commerce, valid in the States where made. True, as suggested by the court below, there has been a diversity of opinion concerning the effect of a C. O. D. shipment, some courts holding that under such a shipment the property is at the risk of the buyer, and therefore that delivery is completed when the merchandise reaches the hands of the carrier for transportation; others deciding that the merchandise is at the risk of the seller, and that the sale is not completed until the payment of the price and delivery to the consignee at the point of destination.

But we need not consider this subject. Beyond possible question, the contract to sell and ship was completed in Illinois. The right of the parties to make a contract in Illinois for the sale and purchase of merchandise, and in doing so to fix by agreement the time when and condition on which the completed title should pass, is beyond question. The shipment from the State of Illinois into the State of Iowa of the merchandise constituted interstate commerce. To sustain, therefore, the ruling of the court below would require us to decide that the law of Iowa operated in another State so as to invalidate a lawful contract as to interstate commerce made in such other State; and, indeed, would require us to go yet further, and say that, although under the interstate commerce clause a citizen in one State had a right to have merchandise consigned from another State delivered to him in the State to which the shipment was made, yet that such right was so illusory that it only obtained in cases where in a legal sense the merchandise contracted for had been delivered to the consignee at the time and place of shipment.

When it is considered that the necessary result of the ruling below was to hold that wherever merchandise shipped from one State to another is not completely delivered to the buyer at the point of shipment so as to be at his risk from that moment the movement of such merchandise is not interstate commerce, it becomes apparent that the principle, if sustained, would operate materially to cripple if not destroy that freedom of commerce between the States which it was the great purpose of the Constitution to promote. If upheld, the doctrine would deprive a citizen of one State of his right to order merchandise from another State at the risk of the seller as to delivery. It would prevent the citizen of one State from shipping into another unless he assumed the risk; it would subject contracts made by common carriers and valid by the laws of the State where made to the laws of another State, and it would remove from the protection of the interstate commerce clause all goods on consignment upon any condition as to delivery, express or implied. Besides, it would also render the commerce clause of the Constitution inoperative as to all that vast body of transactions by which the products of the country move in the channels of interstate commerce by means of bills of lading to the shipper's order with drafts for the purchase price attached, and many other transactions essential to the freedom of commerce, by which the complete title to merchandise is postponed to the delivery thereof.

But general considerations need not be further adverted to in view of prior decisions of this court relating to the identical question here presented. In *Caldwell* v. *North Carolina*, (187 U. S. 622,) the facts were these: The Chicago Portrait Company shipped to Greensboro, North Carolina, by rail, consigned to its order, certain pictures and frames. At Greensboro the company had an agent who received the merchandise,

put the pictures and frames together and delivered them to the purchasers who had ordered them from Chicago. The contention was that the portrait company was liable to a license charge imposed by the town of Greensboro for selling pictures therein, and this was supported by the argument that, although the contract for sale was made in Chicago, it was completed in North Carolina by the assembling of the pictures and frames and the delivery there made. It was held that the license could not be collected, because the transaction was an interstate commerce one. In the course of the opinion, after a full review of the authorities, it was observed (p. 632):

"It would seem evident that if the vendor had sent the articles by an express company, which should collect on delivery, such a mode of delivery would not have subjected the transaction to State taxation. The same could be said if the vendor himself, or by a personal agent, had carried and delivered the goods to the purchaser. That the articles were sent as freight, by rail, and were received at the railroad station by an agent, who delivered them to the respective purchasers, in nowise changes the character of the commerce as interstate."

In *North Carolina & Western Railway Company* v. *Sims*, (191 U. S. 441,) these were the facts: A resident of North Carolina ordered from a corporation in Chicago a sewing machine. The machine was shipped under a bill of lading to the order of the buyer, but this bill of lading was sent to the express agent at the point of delivery in North Carolina, with instructions to surrender the bill on payment of a C. O. D. charge. The contention was that the consummation of the transaction by the express agent in transferring the bill of lading upon payment of the C. O. D. charge was a sale of the machine in North Carolina, which subjected the company to a license tax. The contention was held untenable. Calling attention to the fact that the contract of sale was completed as a contract in Chicago, and after reviewing some of the authorities on the subject of interstate commerce, the court said (p. 450):

"Indeed, the cases upon this subject are almost too numerous for citation, and the one under consideration is clearly controlled by them. The sewing machine was made and sold in another State, shipped to North Carolina in its original package for delivery to the consignee upon payment of its price. It had never become commingled with the general mass of property within the State. While technically the title of the machine may not have passed until the price was paid, the sale was actually made in Chicago, and the fact that the price was to be collected in North Carolina is too slender a thread upon which to hang an exception of the transaction from a rule which would otherwise declare the tax to be an interference with interstate commerce."

The controlling force of the two cases last reviewed upon this becomes doubly manifest when it is borne in mind that the power of the States to levy general and undiscriminating taxes on merchandise shipped from one

State into another may attach to such merchandise before sale in the original package when the merchandise has become at rest within the State, and therefore enjoys the protection of its laws, and this upon the well-recognized distinction that the movement of merchandise from State to State, whilst constituting interstate commerce, is not an import in the technical sense of the Constitution. (*American Steel & Wire Company* v. *Speed*, 192 U. S. 500.)

As from the foregoing considerations it results that the court below erred in refusing to apply and enforce the commerce clause of the Constitution of the United States, its judgment must be reversed.

The judgment of the Supreme Court of Iowa is reversed, and the cause is remanded to that court for proceedings not inconsistent with this opinion.

Mr. Justice HARLAN dissents.

True copy.

Test:

Clerk Supreme Court, U. S.